TABLE I.—THEFT RATES OF MODEL YEARS 1990/91 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEARS 1990/91—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 vehicles produced)
212 Nissan	NX Coupe	0	7	0	8,705	0.8041
213 Chrysler Corp	Dodge Ram Pickup	24	19	42,251	21,763	0.6717
214 General Motors	Saturn SC	0	6	0	10,298	0.5826
215 Saab	9000	10	13	20,675	24,195	0.5126
216 General Motors	GMC Rally Sportvan	0	2	3,092	1,620	0.4244
217 Yugo	GV/GVL/GVX/GVS	1	1	1,323	8,250	0.2089
218 Peugeot	505	0	0	2	654	0.0000
219 Lamborghini	Diablo	0	0	0	110	0.0000
220 Ferrari	F40	0	0	90	60	0.0000
221 Ferrari	348	0	0	377	240	0.0000
222 Rolls-Royce	SIL Spirit/Spur/Mulsa/Eight	0	0	399	505	0.0000
223 Nissan	Van	0	0	292	0	0.0000
224 Rolls-Royce	Corniche/Continental	0	0	162	141	0.0000
225 Aston Martin	Saloon/Vantage/Volante	0	0	2	40	0.0000
226 Rolls-Royce	Turbo R	0	0	340	207	0.0000
227 Lotus	Elan	0	0	0	159	0.0000
228 Lotus	Esprit	0	0	102	28	0.0000
229 Ferrari	Mondial	0	0	98	49	0.0000
230 Maserati	Spyder	0	0	31	4	0.0000
231 Maserati	430/228	0	0	31	0	0.0000

TABLE II—DESIGNATED HIGH THEFT CAR LINES WITH THEFT RATES BELOW THE MEDIAN THEFT RATE OF 3.5826

Manufacturer	Make/model
BMW	8
Chrysler	Chrysler's TC
Ferrari	Mondial
Ford Mercury	Capri
General Motors:	
Buick	Riviera, Electra, Park Avenue, Regal
Cadillac	Eldorado, Allante
Chevrolet	Lumina
Oldsmobile	Cutlass Supreme, 98/Touring
Pontiac	Grand Prix
Saturn	Sports Coupe (SC)
Honda Acura	NSX
Isuzu	Impulse, Stylus
Jaguar	XJ6, XJS
Lotus	Elan
Mazda	MX–5 Miata, 929
Mercedes-Benz	124, 126, 201
Nissan Infiniti	M30, Q45
Peugeot	405
Rover Group	Sterling
Saab	900, 9000
Toyota	Cressida, Celica
Lexus	ES250, LS400
Volkswagen, Audi	100/200/S4

TABLE III.—VEHICLES THAT FELL BELOW THE MEDIAN THEFT RATE AND ARE INTERCHANGEABLE WITH LINES THAT FELL ABOVE THE MEDIAN THEFT RATE

Manufacturer	Theft rate
Chrysler:	
Chrysler Town and Country (MPV)	7.6614
Dodge Caravan/Grand (MPV)	2.9117
Plymouth Voyager/Grand (MPV) (Interchangeable with Chrysler Town and Country MPV)	2.3766
General Motors:	
Chevrolet Caprice	3.6449
Chevrolet Lumina APV (Interchangeable with Pontiac Transport APV and Oldsmobile Silhouette APV)	3.6424
Pontiac Transport APV	2.8548
Oldsmobile Silhouette APV	2.8137
Buick Roadmaster (Interchangeable with Chevrolet Caprice)	0.8917
Nissan:	
Pathfinder (MPV)	13.8175
Pickup Truck (LDT) (Interchangeable with Pathfinder MPV)	3.3245
Toyota:	
4-Runner (MPV)	7.2719
Pickup Truck (LDT) (Interchangeable with 4-Runner MPV)	2.6389

[FR Doc. 94–6097 Filed 3–15–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorization by 38 U.S.C. 3121, will be held on April 17, 18, and 19, 1994 in Washington, DC. The committee will meet from 10 a.m. to 3 p.m. on April 17, from 9 a.m. to 4 p.m. on April 18, and from 9 a.m. to 12 noon on April 19, 1994. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary. The meeting will be open to the public to the seating capacity of the meeting room. Due to changes in the location of the meeting area each day, it will be necessary for those wishing to attend to contact Theresa Boyd at (202) 233–6493 prior to April 14, 1994. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days of the meeting. Oral statements will be heard at 3 p.m. on April 18, 1994.

Dated: March 7, 1994.

By direction of the Secretary.

Heyward Bannister,

**Committee Management Officer.*

[FR Doc. 94–6120 Filed 3–15–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 51
Wednesday, March 16, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, March 24, 1994, 9 a.m. to 5:30 p.m.

LOCATION: First Floor Conference Room, 1550 M Street, N.W., Washington, DC.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-third Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Selection of Solicited Grants, and Selection of the 1994–1995 Jennings Randolph Fellows.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457–1700.

Dated: March 14, 1994.

Charles E. Nelson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 94–6247 Filed 3–14–94; 2:28 pm]

BILLING CODE 3155–01–M

federal register

Wednesday
March 16, 1994

Part II

Environmental Protection Agency

40 CFR Part 60 et al.
National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–4846–7]

RIN 2060–AC98

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 11, 1993, the EPA proposed General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements pursuant to section 112 of the Clean Air Act as amended in 1990 (the Act). This action announces the EPA's final decisions on the General Provisions.

The General Provisions, located in subpart A of part 63, codify general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the 189 substances listed as hazardous air pollutants (HAP) in or pursuant to section 112(b) of the Act. Standards for individual source categories are being developed separately, and they will be codified in other subparts of part 63. When sources become subject to standards established for individual source categories in other subparts of part 63, these sources also must comply with the requirements of the General Provisions, except when specific General Provisions are overridden by the standards.

This action also amends subpart A of parts 60 and 61 to bring them up to date with the amended Act and, where appropriate, to make them consistent with requirements in subpart A of part 63.

DATES: *Effective Date.* March 16, 1994.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of NESHAP is available only by filing a petition for review in the U. S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these General Provisions is approved by the Director of the Office of the Federal Register as of March 16, 1994.

ADDRESSES: *Docket.* Docket No. A–91–09, containing information considered by the EPA in developing the promulgated General Provisions, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, including all non-Government holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

Background Information Document. A background information document (BID) for the promulgated General Provisions may be obtained from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650. Please refer to "General Provisions for 40 CFR Part 63, Background Information for Promulgated Regulation" (EPA–450/3–91–019b). The BID contains: (1) a summary of the public comments made on the proposed General Provisions and responses to the comments and (2) a summary of the changes made to the General Provisions as a result of the Agency's responses to comments that are not addressed in this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Tabler, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5256.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background

Section 301 of title III of the Clean Air Act Amendments of 1990, Public Law 101–549, enacted on November 15, 1990, substantially amended section 112 of the Act regarding promulgation of NESHAP. These NESHAP are to be established for categories of stationary sources that emit one or more of the 189 HAP listed in or pursuant to section 112(b). Each standard established for a source category will be codified in a subpart (or multiple subparts) of part 63. In order to eliminate the repetition of general information and requirements within these subparts, General Provisions that are applicable to all sources regulated by subsequent standards in part 63 have been developed. The General Provisions have the legal force and effect of standards, and they may be enforced independently of relevant standards, if appropriate.

The General Provisions codify procedures and criteria that will be used to implement all NESHAP promulgated under the Act as amended November 15, 1990. The provisions include administrative procedures related to applicability determinations (including new versus existing and area versus major sources), compliance extensions, and requests to use alternative means of compliance. In addition, general requirements related to compliance-related activities outline the responsibilities of owners and operators to comply with relevant emission standards and other requirements. The compliance-related provisions include requirements for compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for performance testing and monitoring, and reporting and recordkeeping requirements. Finally, the EPA is promulgating amendments to the General Provisions for parts 60 and 61 to address new statutory requirements and, where appropriate, to make portions of these existing regulations consistent with the part 63 General Provisions.

Owners or operators who are subject to a subpart promulgated for a specific source category under sections 112(d), 112(f), or 112(h) of the Act are also subject to the requirements of the General Provisions. The General Provisions also will be incorporated, as appropriate, into requirements established under other section 112 authorities (e.g., the early reduction program and case-by-case control technology determinations). Nevertheless, in the development of a part 63 emission standard applicable to a specific source category, the EPA may determine that it is appropriate that the subpart contain provisions that override one or more requirements of the General Provisions. When this occurs, the EPA will describe in the subpart exactly

which requirements of the General Provisions are applicable to the specific source category and which requirements have been overridden. If there is a conflict between a specific requirement in the General Provisions and a specific requirement of another subpart in part 63, the specific requirement of the subpart will supersede the General Provisions.

II. Summary of Major Changes Since Proposal

In response to comments received on the proposed General Provisions, numerous changes have been made in the final rule. A significant number of these are clarifying changes, designed to make the Agency's intent clearer as requested by commenters. In addition, many changes have been made in the final rule wherever reasonable to reduce the paperwork burden on sources affected by part 63 NESHAP and on State agencies that will implement part 63 NESHAP once they have been delegated the authority to do so.

Substantive changes made since proposal which have a broad impact on the regulated community that will be subject to the General Provisions are summarized in this section of the preamble. These, and other substantive changes made since proposal, are described in more detail in the following sections. The Agency's responses to public comments that are not addressed in this preamble and a summary of resulting changes in the final rule are contained in the BID for this final rulemaking (see **ADDRESSES** section of this notice).

Many comments were received on the timing and content of notifications and other reports required by the General Provisions and on recordkeeping requirements. Comments from owners or operators of facilities potentially subject to part 63 standards (and the General Provisions) generally asked for more time to prepare submittals than allowed in the proposed rule and for a reduction in the amount of information that must be recorded or submitted. State and local agencies that will be implementing the rule expressed concern about the timing and volume of information that would be submitted to them and about their ability to respond to these submittals. These agencies also requested flexibility in implementing requirements of the General Provisions.

The Agency made significant changes in the final rule from the proposed rule in response to these comments. These changes significantly reduce the burden on owners and operators but also recognize the need that enforcement agencies have for timely and adequate information to assess compliance with emission standards and other requirements established under section 112 of the Act. These significant changes are discussed below.

Initial Notification

Under § 63.9(b) of the General Provisions, when a relevant part 63 standard is promulgated for a source category, owners or operators of sources that are subject to the standard must submit a notification. In the final rule, the time period allowed for submission of the initial notification has been extended from 45 days to 120 days. Also, the information required to be submitted with the initial notification has been reduced greatly.

Requests for Compliance Extensions

Changes were made from proposal to § 63.6(i), which deals with compliance extension requests, to increase the allowable times for Agency review and for owners or operators to provide additional information. The EPA also added provisions to the final rule, pursuant to section 112(i)(6) of the Act, that establish procedures for a source to request a compliance extension if that source has installed best available control technology (BACT) or technology to meet a lowest achievable emission rate (LAER).

Excess Emission Reports

A major change was made in the recordkeeping and reporting requirements concerning the need for, and frequency of, quarterly excess emissions reports. In the proposed rule, if continuous monitoring systems (CMS) data were to be used for direct compliance determinations, a quarterly report on excess emissions or parameter monitoring exceedances was required in § 63.10(e)(3), even if there were no occurrences of excess emissions or exceedances during that reporting period ("negative reporting"). In the final rule, as long as there are no occurrences of excess emissions or parameter monitoring exceedances, semiannual reporting is sufficient. In addition, the procedures for an affected source to reduce the frequency of required reports have been clarified in the final rule.

Performance Tests and Performance Evaluations

The performance test deadline specified under § 63.7(a)(2) was extended from 120 days to 180 days after a source's compliance date. Similarly, the § 63.7(b) requirement to provide notice of the date of the performance test was reduced from 75 days to 60 days before the test. Observation of the test by the EPA (or the delegated State agency) is intended to be optional, and this section was revised to clarify this point. A similar change was made to § 63.8(e)(2), notice of performance evaluation (for CMS), to allow a 60-day notification period rather than a 75-day period. Also, § 63.7(g) was revised to allow sources 60 days, instead of 45 days, to submit the required performance test results to the enforcing agency.

A major comment related to performance tests concerned the proposed requirement that sources submit site-specific performance test plans to the Administrator for review and approval before a required performance test is conducted. This requirement has been changed in the final rule such that the test plan must be developed and made available for review, but it does not need to be submitted for approval prior to a required performance test unless it is requested by the EPA or delegated State agency. A similar change has been made in the final rule regarding the development and submittal of site-specific performance evaluation test plans under § 63.8(d).

Some commenters expressed confusion regarding the distinction between performance tests and performance evaluations, and the EPA has added definitions of "performance test" and "performance evaluation" to the final rule to respond to this confusion. In addition, the Agency has defined the phrase "representative performance" in the final rule for the purpose of clarifying the conditions for conducting performance tests.

Finally, the EPA clarified the situation when a final standard is more stringent than a proposed standard and when a source would be allowed to (1) conduct an initial performance test to demonstrate compliance with the proposed standard and a second test to demonstrate compliance with the final standard or (2) conduct an initial performance test to demonstrate compliance with the final standard.

Startup, Shutdown, and Malfunction Plan

Commenters generally objected to the level of detail they perceived to be required in the startup, shutdown, and malfunction plan (§ 63.6(e)). The intent and purpose of the plan is explained further in section IV.F.1 of this preamble and clarifying changes have been made in the rule. Specifically, the rule has been revised to delete the requirement for "step-by-step" procedures. Numerous comments were

received relating to the timing and circumstances of reports of deviations from a source's plan. In response to the commenters' concerns, the EPA has revised the rule to require reporting of actions that are "not consistent" (rather than "not completely consistent") with the plan. The Agency also has increased the time period for sources to provide "immediate" reports of these actions from 24 hours to 2 working days. The follow-up report is required within 7 working days.

Other Changes to Reporting and Recordkeeping Requirements

The final rule includes provisions for EPA Regional Offices to waive the duplicate submittal of notifications and reports at their discretion. Also, the requirements relating to negotiated schedules (i.e., "mutual agreement provisions") were revised from proposal to more clearly reflect implementing agencies' prerogatives to comply with the schedules outlined in the General Provisions. Finally, a recordkeeping requirement has been added (in § 63.10(b)(3)) for owners and operators of area sources to maintain a record of the determination of their area source status when this determination is necessary to demonstrate that a relevant standard for major sources does not apply to them.

There were also significant changes in other areas of the rule from proposal. These are summarized below.

Monitoring

Several comments concerned the relevance and applicability of the part 63 monitoring provisions to related monitoring provisions contained in other parts (e.g., parts 60, 61, 64, and 70), as well as the relationship between monitoring provisions in the General Provisions and those in other subparts of part 63. The EPA has provided additional clarification and made changes to specific provisions as a result of these comments.

Repair Period for Continuous Monitoring Systems (CMS)

The Agency also received many comments on the proposed 7-day repair period for CMS. After consideration of these comments, the EPA revised § 63.8(c)(1) of the rule to distinguish between routine and nonroutine CMS malfunctions. The final rule requires the immediate repair of "routine" CMS failures. In addition, the owner or operator will be required to identify these routine malfunctions in the source's startup, shutdown, and malfunction plan. Nonroutine failures of the CMS must be reported and repaired within 2 weeks after commencing actions inconsistent with the plan unless circumstances beyond the owner or operator's control prevent the timely repair or replacement of the CMS.

Construction and Reconstruction

Many comments were received regarding the administrative procedures for reviewing and approving plans for construction or reconstruction, and several changes were made to the rule in response to these comments. At the request of State and local agencies, the EPA has deleted the provision in § 63.5(c) that allowed an owner or operator to request that the implementing agency prereview construction or reconstruction plans. In addition, the final rule has been revised to allow owners and operators of new or reconstructed major affected sources greater discretion in the timing of submitting applications for approval of construction or reconstruction. The final rule requires that these applications be submitted "as soon as practicable" before the construction or reconstruction is planned to commence, rather than 180 days in advance, as was proposed. The Agency also revised the definition of reconstruction and the ensuing requirements for a reconstructed source to clarify their applicability. The Agency received several comments regarding reconstruction determinations, especially where a source has installed control devices to meet emission standards established for existing sources. In response, the Agency has explained its policy on these issues and clarified that it is not the Agency's intent to penalize sources that make changes to comply with existing source maximum achievable control technology (MACT) requirements by subjecting them to new source MACT requirements to which they otherwise would not be subject.

Applicability

The rule has been revised in several places to clarify the applicability of the General Provisions. Revisions were made to § 63.1 of the rule to clarify that a source that is subject to any part 63 standard or requirement is also subject to the requirements of the General Provisions unless otherwise specified in the General Provisions or the relevant standard. Provisions have been added to address two situations related to major and area source determinations. As noted earlier, the Agency added a recordkeeping requirement in the final rule to require sources that determine they are not subject to a relevant standard to keep a record of their applicability determination. The EPA also added provisions in the final rule to address compliance dates for unaffected area sources that increase their emissions such that they become major sources that are subject to part 63 NESHAP.

Separate Rulemaking on Potential to Emit

Under section 112, the determination of whether a facility is a major source or an area source is made on the basis of the facility's "potential to emit" HAP, "considering controls." This is an important determination, because different requirements may be established in a part 63 standard for major and area sources, and area sources in a source category may not be regulated by some standards. The EPA's intended policy for implementing "potential to emit considering controls" was reflected in the definition proposed in § 63.2 of the General Provisions for the term "potential to emit." The proposed definition included the requirement that, for a physical or operational limitation on HAP emissions (including air pollution control devices) to be considered to limit a source's potential to emit for the purposes of part 63, the limitation or the effect it would have on emissions must be federally enforceable. A definition of "federally enforceable" was also proposed.

Many comments were received on the topic of potential to emit. As discussed later in this preamble, consistent with past Agency policies on potential to emit, the EPA has retained in today's final rule the same definition of potential to emit that was proposed. However, substantive issues were raised by commenters on the mechanisms and timeframe available for establishing the Federal enforceability of potential to emit limitations that went beyond the scope of issues addressed in the August 11, 1993 proposed rulemaking for the General Provisions.

Because of this, and because of the importance of potential to emit to determining the applicability of part 63 standards and other requirements, the Agency is planning to propose a separate rulemaking to address several specific potential to emit issues. This separate notice of proposed rulemaking, which will appear in the near future in the **Federal Register**, would amend the General Provisions to provide mechanisms for validating limits on sources' potential to emit HAP until permanent mechanisms for creating HAP potential to emit limits are in place in States. In addition, this separate rulemaking would specify deadlines by

which major sources of HAP would be required to establish the Federal enforceability of limitations on their potential to emit in order to avoid compliance with otherwise applicable emission standards or other requirements established in or under part 63.

The EPA will take final action on this separate proposal after receiving and considering public comments. Until the Agency takes final action on the proposal, any determination of potential to emit made to determine a facility's applicability status under a relevant part 63 standard should be made according to requirements set forth in the relevant standard and in the General Provisions promulgated today.

Cross Referencing in the Rule

Cross-references to other parts (e.g., regulations in part 71 establishing a Federal operating permit program) or subparts (e.g., subpart C, the list of hazardous air pollutants) were included in the proposed General Provisions as a convenience to inform readers where they may locate other general information. At present, no rules have been proposed or promulgated in either subpart C or in part 71. Consequently, these cross-references have been removed from the General Provisions.

III. Public Participation

Prior to proposal of the General Provisions, interested parties were advised by public notice in the **Federal Register** (56 FR 54576, October 22, 1991) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the draft General Provisions. That meeting was held on November 19–21, 1991. In addition, a status report on the General Provisions was presented to the NAPCTAC during the Committee's November 17–18, 1992 meeting. Both meetings were open to the public and each attendee was given an opportunity to comment on the draft General Provisions. In addition, numerous meetings and correspondence occurred between the Agency and representatives from affected industries, environmental groups, and State and local agencies during the process of drafting the proposed General Provisions. Documentation of these interactions can be found in docket A–91–09.

The proposed General Provisions were published in the **Federal Register** on August 11, 1993 (58 FR 42760). The preamble to the proposed General Provisions discussed the availability of the proposal BID ("General Provisions for 40 CFR part 63, Background Information for Proposed Regulation" (EPA–450/3–91–019)), which provides an historical perspective on precedents set by the EPA in implementing similar General Provisions under the pre-1990 Act. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

The public comment period officially ended on October 12, 1993. A public hearing was not requested; however, seventy-one comment letters were received. The comments were carefully considered, and where determined to be appropriate by the Administrator, changes were made in the final General Provisions.

IV. Significant Comments and Changes to the Proposed General Provisions

Comments on the proposed General Provisions were received from industry, State and local air pollution control agencies, Federal agencies, trade associations, and environmental groups. A detailed discussion of comments and the EPA's responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The major comments and responses are summarized in this preamble.

A. Applicability Determinations

1. Overview

Sections 112 (c) and (d) of the amended Act require the EPA to list and establish emission standards for major and area sources of the HAP that are listed in or pursuant to section 112(b). A list of categories of sources emitting listed HAP was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Each standard developed by the EPA for a source category (referred to as a "relevant standard" or a "source category-specific standard") will be proposed for public comment in the **Federal Register** and when it is finalized, it will be codified in a subpart (or multiple subparts) of part 63.

Each standard promulgated for a source category will apply to major sources of HAP that contain equipment or processes that are defined and regulated by that standard. Area sources of HAP also may be subject to the standard if an area source category has been listed and the standard specifies that it applies to area sources. Each standard will include requirements for new and existing sources.

The determination of whether a source is a major source or an area source is made on the basis of its "potential to emit" HAP. In general, sources with a potential to emit, considering controls, 10 tons per year or more of any one listed HAP or 25 tons per year or more of any combination of listed HAP are major sources. For the purposes of implementing section 112, the major/area source determination is made on a plant-wide basis; that is, HAP emissions from all sources located within a contiguous area and under common control are considered in the determination, unless specific provisions elsewhere in section 112 (e.g., for oil and gas wells under section 112(n)(4)) override this general rule.

More than one source category on the EPA's source category list may be represented within a plant that is a major source of HAP. This will be the case, for example, at a large chemical manufacturing complex. The major source determination will be made on the basis of HAP emissions from all emission sources within the complex. However, there could be many operational units within the complex, with each unit producing a different petroleum or chemical product or intermediate. The EPA source category list defines many categories on the basis of product produced (e.g., polyether polyols production, chlorine production). Standards for each of these categories will be developed in separate rulemakings. The EPA believes that Congress intended that all portions of a major source be subject to MACT regardless of the number of source categories into which the facility is divided. Thus, the EPA will set one or more MACT standards for a major source, and sources within that major source will be covered by the standard(s), regardless of whether, when standing alone, each one of those regulated sources would be major.

As described earlier (as well as in the preamble to the proposed General Provisions), the General Provisions promulgated with this rulemaking are intended to bring together in one place (subpart A of part 63) those general requirements applicable to all owners and operators who must comply with standards established for the listed source categories. The General Provisions for part 63 contain provisions that are common to relevant standards such as definitions, and requirements for initial notifications, performance testing, monitoring, and reporting and recordkeeping. The establishment of General Provisions for part 63 standards eliminates the need to repeat common elements in each source category-specific standard. It is also consistent with the approach taken previously by the EPA in developing and implementing new source performance standards (NSPS) under section 111 of the Act and NESHAP

under section 112 of the Act before the 1990 Clean Air Act Amendments. General Provisions for these programs are contained in subpart A of part 60 and subpart A of part 61, respectively.

The basic approach in the General Provisions promulgated today for determining applicability (i.e., who is subject to these requirements) is the same as was proposed. That is, applicability of the General Provisions is determined by the applicability of relevant source category-specific standards promulgated in other subparts of part 63. Each owner or operator who is subject to a relevant source category-specific standard in part 63 is also subject to the General Provisions, except when the standard specifically overrides a specific General Provisions requirement. Section 63.1(b) of the final General Provisions, addressing initial applicability determinations for part 63, has been revised to clarify this approach for determining applicability. Section 63.1(b)(1) of the proposed rule stated that the owner or operator of any stationary source that is included in the most up-to-date source category list and that emits or has the potential to emit any HAP is subject to the provisions of part 63. The reference to the source category list has been removed from the final rule, and a paragraph has been added specifying that part 63 provisions apply to any stationary source that "emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act and is subject to any standard, limitation, prohibition or other federally enforceable requirement established pursuant to [part 63]." This clarifies that belonging to a listed category of sources alone does not render a source subject to the provisions of part 63; rather, the source must be subject to a part 63 standard or other requirement.

The term "affected source" is established and used in the General Provisions to designate the specific "source," or group of "sources," that is subject to a particular standard. This term is analogous to the term "affected facility" used in NSPS. Affected sources will be defined explicitly in each part 63 standard promulgated for a source category or established for a source on a case-by-case basis. The individual pieces of equipment, processes, production units, or emission points that will be defined as affected sources subject to emission limits or other requirements under that relevant standard will be determined in the development of the standard for the source category or the source. An affected source within a source category could be defined, for example, as a storage tank with greater than a specified capacity and containing organic liquids with greater than a specified vapor pressure. Within a major source, any individual "source" or group of "sources" that meets the definition of affected source in a relevant standard would be subject to the requirements in the standard for major sources.

In general, the timing of applicability (i.e., when does an owner or operator become subject to the General Provisions) is determined by when a relevant source category-specific standard is promulgated. The effective date for standards promulgated under sections 112(d), 112(h), and 112(f) of the Act is the date of promulgation. On the date of promulgation of a relevant source category-specific standard, the General Provisions also become applicable to owners or operators subject to the standard for the source category.

The EPA received numerous comments relating to various definitions of "source," how these definitions relate to one another, and how they determine which portions of a HAP-emitting industrial (or commercial) facility will be regulated by emission standards or other requirements under amended section 112. Some of these comments agreed with the EPA's proposed approach to defining these terms, some suggested alternative approaches, and many requested clarification on these topics. Major comments and the EPA's responses on the definitions of "major source" and "area source," and on the definition of "affected source," are discussed below. Comments on the relationship of the General Provisions to relevant source category-specific standards are discussed in section IV.C.1. Additional responses to comments relating to applicability of the General Provisions are included in the promulgation BID.

2. Definitions of Major Source and Area Source

Several commenters noted that the discussion in the proposal preamble on "major source," as defined in the proposed rule, suggests inclusion of all stationary sources located on contiguous or adjacent property. These commenters argue that the EPA's interpretation goes beyond the statutory definition of major source in section 112(a)(1), which does not use the term "adjacent." Another commenter stated that adding "adjacent" to the definition adds uncertainty to applicability determinations.

The EPA disagrees with these commenters. First, the use of the term "adjacent" is consistent with the language of the statute. The common dictionary definition of "contiguous" consists, in part, of "nearby, neighboring, adjacent." On this basis, the EPA has historically interpreted "contiguous property" to mean the same as "contiguous or adjacent property" in the development of numerous regulations to implement the Act. Under this approach, the physical relationship of emission units to production processes is irrelevant if the units are adjacent geographically and under common ownership or control.

This approach clarifies, that as a practical matter, the fact that all property at a plant site may not be physically touching does not mean that separate plant sites exist. For example, it is common for a railroad right-of-way or highway to cut across a plant site. However, this does not create two separate plant sites. To claim that it does would be an artificial distinction, and it is contrary to the intent of the statutory definition of major source.

Many commenters asserted that the definition of "major source" in the General Provisions should include reference to standard industrial classification (SIC) codes as was done in the part 70 permit program regulations implementing title V of the Act. However, other comments were received that supported the proposed definition of "major source" and expressed concern that the EPA might adopt the title V approach to defining "major source" which, according to one commenter, would be inconsistent with the definition in section 112(a)(1) of the Act.

The EPA believes that, because Congress included a definition for "major source" in section 112 that does not include reference to SIC codes, Congress intended that major sources of HAP would encompass entire contiguous (or adjacent) plant sites without being subdivided according to industrial classifications. The separation of HAP emission sources by SIC code would be an artificial division of sources that, in reality, all contribute to public exposure around a plant site.

Furthermore, because of the different objectives of section 112 and title V of the Act, and because section 112 contains its own definition, the definition for "major source" in part 63 need not be identical to the definition for "major source" currently promulgated in part 70. The EPA believes that the definition for major source adopted in the General Provisions is appropriate for implementing section 112. The EPA will consider whether changes to the

definition of major source in part 70, as it relates to section 112, are appropriate. If the EPA concludes that such changes are needed, the EPA will propose changes to part 70 and take comment before reaching a final decision in the **Federal Register.**

Comments were received that the definition of "area source" should be changed to "affected area source." Also, commenters suggested that the definitions of "major source" and "area source" should be revised to refer to emission units or groups of similar emission units that are in a specific category of major sources located within a contiguous area under common control and to clarify that area sources are not affected by NESHAP established for major sources.

The EPA believes that it is more appropriate and less confusing to define "major source" and "area source" consistent with the definitions in section 112(a) of the Act. Nonetheless, for the purposes of implementing section 112, consistent with the applicability discussion above, "area sources" may be further divided into affected area sources and unaffected area sources. An affected area source would be a plant site that is not a major source but is subject to a relevant part 63 emission standard that regulates area sources in that source category.

One commenter requested that the EPA address the issue of a compliance date for area sources that increase their emissions (or potential emissions) such that they become major sources and therefore subject to a relevant standard. The commenter said that this was a particular concern in situations where the area source has not obtained a construction permit.

The commenter is correct that the proposed General Provisions did not address area sources that subsequently become major sources and therefore subject to a relevant standard. Sections 63.6(b)(7) and (c)(5) have been added to the final rule to address this situation.

Section 63.6(b)(7) states that an unaffected new area source that increases its emissions of (or its potential to emit) HAP such that it becomes a major source, must comply with the relevant emission standard immediately upon becoming a major source. An unaffected existing area source that increases its emissions (or its potential to emit) such that it becomes a major source, must comply by the date specified for such a source in the standard. If such a date is not specified, the source would have an equivalent period of time to comply as the period specified in the standard for other existing sources. However, if the existing area source becomes a major source by the addition of a new affected source, or by reconstructing, the portion of the source that is new or reconstructed is required to comply with the standard's requirements for new sources. These compliance periods apply to area sources that become affected major sources regardless of whether the new or existing area source was previously affected by that standard.

3. Definition of Affected Source

The EPA received numerous comments on the usefulness of the term "affected source," in response to the Agency's specific request for comments on this term in the proposal preamble. Comments were received that supported the Agency's proposed use of "affected source," and others offered suggestions for changes or clarifications.

Some commenters stated that it is not clear how inclusive "affected source" is meant to be. For example, does it collectively cover all equipment associated with the source category?

Some commenters argued that the definition of "affected source" in the General Provisions should be narrow, encompassing as few emission points as possible. Others argued for a broad definition consistent with the EPA's policy on defining the "affected source" during the development of specific NESHAP.

Several commenters suggested terms as alternatives to "affected source." Terms suggested included "part 63 source" and "regulated source." Commenters claimed that alternative terms would be more appropriate and would reduce confusion about the applicability of a variety of EPA regulations including NESHAP under part 61 and the title IV acid rain regulations.

After a review of the suggestions made by commenters, the EPA decided to retain the term "affected source" in the final rule. No comments were received that disputed the need for a separate term to designate the units that are subject to requirements in a source category-specific standard. Further, the EPA did not find any of the arguments for alternative terms compelling. For example, commenters did not make it clear how the use of a term such as "regulated source" would be more descriptive and less confusing than "affected source."

Nevertheless, the EPA has endeavored to address any confusion that might arise on a case-by-case basis. For example, the EPA has revised the definition for the term "affected source" in part 63 to note that it should not be confused with the same term used in title IV of the Act and the rules developed to implement title IV, the acid rain provisions. Despite this revision, the Agency believes States may wish to draw a distinction in their regulations to implement the title V permit program and in individual sources' title V permits in order to avoid the possibility of confusion between the term affected source as used in part 63 and the term affected source as used in the title IV regulations. For example, the Agency believes it may be appropriate in some instances for State permitting authorities, when dealing with sources affected by both title IV and part 63 requirements, to refer to sources affected by part 63 as "part 63 affected sources."

With regard to those comments that requested narrow or broad definitions of the term "affected source," the EPA believes these comments would be addressed more appropriately in the context of rulemakings that will establish standards for individual source categories. The General Provisions merely define a term, "affected source," that refers to the collection of processes, equipment, or groups of equipment that will be defined in each relevant standard under part 63 (including case-by-case MACT standards or "equivalent emission limitations") for the purposes of defining the scope of applicability of that standard. Consistent with the approach of using the nonspecific term "affected source," the EPA believes it is inappropriate for the General Provisions rule to restrict in advance the definition of the affected source that may be developed for the purposes of regulation by a particular standard established under part 63.

B. Potential to Emit

The EPA received many comments on the definition of potential to emit that appeared in the proposed General Provisions. Many of these comments questioned the appropriateness of considering only federally enforceable controls or limitations in determining a source's potential to emit. The commenters suggested that all operational controls or limitations or, alternatively, all legally enforceable controls or limitations, should be considered in determining potential to emit, not just federally enforceable ones. One commenter further suggested that all physical or operational limitations that keep a source below the major source threshold are effectively federally enforceable, as any operation with HAP emissions above the threshold values would violate the title V permit and MACT standard

compliance requirements for major sources.

The Agency believes that these comments are similar in all relevant respects to arguments the Agency already has considered and responded to in a previous rulemaking that dealt with the Federal enforceability of emissions controls and limitations at a source. For a thorough discussion on this topic, see "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Air Quality, New Source Review; Final Rules" that appeared in the Federal Register on June 28, 1989 (54 FR 27274). (A copy of this notice has been included in the docket for this rulemaking.) After careful consideration during that rulemaking, the EPA decided to retain the requirement for Federal enforceability. At this time, the Agency sees no reason to rescind its decisions described in the June 28, 1989 Federal Register notice. On the contrary, the Agency here is affirming the relevance of the Federal enforceability requirements set forth in the June 28, 1989 notice in the context of determinations of major source status under the new Federal air toxics program.

In the context of implementing the air toxics program under amended section 112, the purposes of the Federal enforceability requirements are as follows: (1) To make certain that limits on a source's capacity are, in fact, part of its physical and operational design, and that any claimed limitations will be observed; (2) to ensure that an entity with strong enforcement capability (i.e., the Federal government) has legal and practical means to make sure that such commitments are actually carried out; and (3) to support the goal of the Act that the EPA should be able to enforce all relevant features of the air toxics program as developed pursuant to section 112. The Agency continues to believe that, if sources may avoid the requirements of a Federal air pollution control program by relying on State or local limitations, it is essential to the integrity of the National air toxics program that such limitations be actually and effectively implemented. Thus, Federal enforceability is both necessary and appropriate to ensure that such limitations and reductions are actually incorporated into a source's design and followed in practice. Further, Federal enforceability is needed to back up State and local enforcement efforts and to provide incentive to source operators to ensure adequate compliance. Federal enforceability also enables citizen enforcement under section 304 of the Act.

Thus, in the final General Provisions rulemaking, the Agency is retaining the existing Federal enforceability requirement in the definition of potential to emit for the purposes of implementing section 112 of the Act as amended in 1990.

In the June 28, 1989 Federal Register notice, the EPA established that, to be federally enforceable, emission limitations established for a source must be practicably enforceable. To be practicably enforceable, the limitations or conditions must ensure adequate testing, monitoring, recordkeeping, and reporting to demonstrate compliance with the limitations and conditions. Restrictions on operation, production, or emissions must reflect the shortest practicable time period (generally one month). "Blanket" emission limitations such as calendar year limits (e.g., tons per year) are not considered practicably enforceable. In contrast, hourly, daily, weekly, or monthly rolling averages generally are considered acceptable.

Many of the comments requesting that the EPA credit controls that are not federally enforceable in the potential to emit determination were based on a concern over the limited mechanisms available by which emission controls can qualify as federally enforceable. For example, although the EPA will consider terms and conditions in a permit issued under title V of the Act to be federally enforceable, approved State title V permit programs are not yet in place. This effectively limits the mechanisms available to sources subject to early MACT standards. Comments were also received requesting further clarification on how the Agency's potential to emit policy would be implemented, and on how this policy could be implemented with the least burden on both States and affected sources.

As noted earlier in this preamble, the EPA is preparing a separate notice of proposed rulemaking to address potential to emit issues. This notice will propose for public comment a thorough discussion on the Agency's policy with regard to implementing potential to emit in the air toxics program. Among other actions, this rulemaking would amend the General Provisions to provide an interim mechanism for controls to qualify as federally enforceable for HAP until permanent mechanisms are in place. The Agency will consider comments on this proposal and take final action on an expedited schedule.

C. Relationship of General Provisions to Other Clean Air Act Requirements.

1. Relationship to Individual NESHAP.

The promulgated General Provisions to part 63 are applicable to all source categories that will be regulated by part 63 NESHAP. Emissions of HAP from all listed source categories eventually will be regulated by NESHAP pursuant to section 112 of the Clean Air Act Amendments of 1990. The General Provisions provide basic, common requirements for all sources subject to applicable standards, and they are intended to avoid unnecessary duplication of information in all subsequent subparts. All parts of the General Provisions apply to an affected source regulated by an applicable standard, unless otherwise specified by the particular standard.

The EPA recognizes that in the development of a standard applicable to a specific source category, the Agency may determine that certain General Provisions of subpart A may not be appropriate. Consequently, as mentioned earlier, subpart A allows individual subparts to supersede some of the requirements of subpart A. Should there be a conflict between the requirements in the General Provisions and specific requirements of another subpart in part 63, whether or not the subpart explicitly overrides the General Provisions, the requirements of the other subpart will prevail.

The Agency received many comments regarding the proposed relationship between the General Provisions and part 63 standards for specific source categories. A substantial number of commenters expressed the opinion that the EPA should reverse the presumptive relationship that the General Provisions apply unless specifically overridden in a source category-specific standard. These commenters argued that the General Provisions should not be applicable until specifically incorporated by an applicable standard. Thus, instead of automatic applicability to any regulated source, the General Provisions would have no regulatory force until specifically incorporated by individual subparts. Specific reasons cited by commenters for advocating this approach focused on minimizing the potential for conflict between the General Provisions and individual subparts and reducing confusion on the part of owners or operators who must establish which provisions are applicable. Some commenters also stated that only generic requirements should be included in the General Provisions, and more specific

requirements should be left to individual NESHAP.

The Agency believes that the alternative approach suggested by these commenters is not appropriate. Consequently, the proposed approach has been retained in the final rule. The Agency's concern is that minimum regulatory requirements be established for the control of HAP emissions from source categories. The General Provisions as promulgated ensure an appropriate baseline level of requirements for all sources, and they provide guidance at an early stage to sources regarding the types of requirements that will ensue upon promulgation of an applicable standard. The EPA believes that the provisions of subpart A are the minimum generic requirements necessary for the implementation of NESHAP. The EPA's experience with existing General Provisions under parts 60 and 61 confirms that such provisions eliminate repetition within individual standards. They also improve consistency and understanding of the basic requirements for affected sources among the regulated community and compliance personnel.

Despite the preceding discussion, the EPA does recognize the potentially confusing task faced by owners and operators who must determine which provisions of the General Provisions apply to them, which are explicitly superseded by an applicable subpart, and which are superseded because they conflict with a requirement in an individual standard. Many commenters are concerned about the potential for confusion regarding their compliance responsibilities. By establishing a mechanism whereby all the provisions of subpart A are applicable to an affected source unless otherwise specified, the EPA believes some source responsibilities are directly clarified.

Furthermore, as the Agency continues to develop emission standards for specific source categories, the EPA intends to indicate clearly in these subsequent rulemakings which requirements of subpart A sources in the category are subject to and which requirements are superseded by the individual subpart. The public will have the opportunity to review and comment on Agency decisions on which requirements of the General Provisions are overridden in a source category-specific standard when that standard is proposed in the **Federal Register**.

Other issues were raised by commenters pertaining to general features of the relationship between the General Provisions and individual MACT standards. Several commenters expressed concern with the potential for a situation where there are conflicting provisions between the individual subpart and subpart A, and the individual subpart does not specifically supersede the General Provisions requirement. Proposed § 63.1(a)(13) stated that individual subparts will specify which General Provisions are superseded. Certain commenters believe that provisions in individual subparts should prevail, even if they do not explicitly state that they supersede General Provisions.

The EPA agrees with these commenters. It is the Agency's intent that when there are conflicting requirements in the General Provisions and a source category-specific standard, the requirements of the standard will supersede the General Provisions. If a specific standard does not address a requirement within the General Provisions, then the General Provisions must be followed by the owner or operator. The Agency intends to review thoroughly the appropriateness of applying the General Provisions when developing each source category-specific standard and to indicate clearly in the standard any requirements of the General Provisions that are overridden. However, the Agency appreciates the concerns of the commenters that a conflicting requirement may be overlooked and not explicitly identified in the standard. Therefore, to avoid confusion should a conflicting requirement not be explicitly identified in the standard, the EPA has deleted the statement in § 63.1(a)(13) that individual subparts always will specify which provisions of subpart A are superseded.

2. Relationship to Section 112(g), Section 112(j), and Section 112(i)(5) of the Act

Several comments were received on the relationship of the General Provisions for part 63 to requirements under sections 112(g) and 112(j) of the Act. Regulations to implement section 112(g) and section 112(j) are being developed by the EPA in separate rulemakings. Section 112(g) addresses the modification, construction, and reconstruction of major sources after the effective date of title V permit programs and primarily before source category-specific standards are promulgated. Section 112(j) addresses equivalent emission limitations to be established by the States through title V permits if the EPA fails to promulgate a standard for a category of sources on the schedule established under section 112(e).

Under both of these sections, States may be required to make case-by-case MACT determinations for sources if the EPA has not yet established an applicable emission limitation under section 112. For example, under section 112(g)(2), after the effective date of a title V permit program in any State, no person may modify a major source of HAP in the State, unless the Administrator (or the State) determines that the MACT emission limitation under section 112 for existing sources will be met. This determination must be made on a case-by-case basis where an applicable emission limitation has not been established by the EPA. A similar determination involving new source MACT must be made before a major source is constructed or reconstructed.

Several commenters stated that it was unclear if the General Provisions are intended to be minimum requirements that would apply to sources subject to case-by-case MACT standards established under sections 112 (g) and (j).

The EPA is still considering the most appropriate way to link the General Provisions to the case-by-case MACT standards established under sections 112 (g) and (j). While the EPA believes that some requirements of the General Provisions should apply to any MACT standard established under section 112 (including case-by-case MACT standards), the Agency also recognizes that there may be situations where blanket application of the General Provisions to a particular source or source category may not be appropriate. As discussed elsewhere in this preamble and as stated in the applicability section of the final rule, an emission standard established for a particular source category can override some provisions of the General Provisions, as appropriate. The EPA is reviewing whether it is appropriate to provide similar authority to States with approved title V permit programs to override the General Provisions in case-by-case MACT standards established under sections 112(g) and 112(j) and how such authority should be implemented. In general, the EPA believes that the General Provisions provide an appropriate framework for many aspects of demonstrating compliance with case-by-case MACT determinations. The issue of the relationship of the General Provisions to section 112(g) and section 112(j) will be addressed in the rulemakings implementing these subsections or in future EPA guidance material.

One commenter wanted the EPA to clarify that the General Provisions are superseded by forthcoming subpart B regulations to implement section 112(g).

The EPA disagrees with this commenter. From a general perspective,

it cannot be stated that the General Provisions would be superseded by regulations established under section 112(g). Many definitions and requirements of the General Provisions will be appropriate for standards established under section 112(g) (e.g., definitions of key terms such as "major source" and "HAP"). However, as discussed in the response to the previous comment, the EPA is reviewing whether it is appropriate to allow case-by-case MACT standards developed under section 112(g) to override individual requirements of the General Provisions.

A commenter stated that the definition of "federally enforceable" in the proposed General Provisions was different from the definition proposed in regulations to implement section 112(j) (58 FR 37778, July 13, 1993). This commenter further stated that only one definition should appear, and that it should be in subpart A.

The EPA agrees with the commenter and intends that the definition of federally enforceable in the General Provisions should apply to all requirements developed pursuant to section 112 including standards developed under section 112(j) and section 112(g). A definition of "federally enforceable" was included in the proposed regulations to implement section 112(j) because those regulations were published before the proposal date of the General Provisions. The final regulations implementing section 112(j) of the Act and forthcoming regulations implementing section 112(g) will defer to the definition of federally enforceable that is included in the General Provisions.

One commenter argued that the issue of preconstruction review should be left to the rule that will implement section 112(g) of the Act. Further, the commenter stated that if the proposed preconstruction review requirements in the General Provisions are adopted, they should be consistent with procedures in the section 112(g) rule.

The EPA disagrees with these comments. The requirements for preconstruction review included in the General Provisions are intended to implement the preconstruction review requirements of section 112(i)(1) of the Act, which the EPA views as inherently different from the preconstruction review requirements of section 112(g). Section 112(i)(1) requires review by the EPA (or a State with delegated authority) prior to the construction or reconstruction of a major source of HAP in cases where there is an applicable emission limitation that has been promulgated by the EPA under sections 112 (d), (f), or (h); that is, a national emission standard has been promulgated. The requirements of a national emission standard undergo public review and comment during development of the rule.

In contrast, requirements in section 112(g) for review prior to construction, reconstruction, or modification of a major source address situations where a national emission standard has not been promulgated and MACT must be determined on a case-by-case basis. In this situation, there has been no prior opportunity for public review of and comment on applicable requirements.

This basic difference makes it appropriate to have separate provisions implementing the preconstruction review requirements of sections 112(i)(1) and 112(g) of the Act. In addition, section 112(g) does not apply before the effective date of the title V permit program in each State, whereas section 112(d) or 112(h) standards may go into effect before the permit program and thus need independent regulatory provisions governing preconstruction review.

One commenter said that the EPA should state that after the effective date of a MACT standard established by the EPA, compliance with that standard by a source would also constitute compliance with section 112(g).

The EPA generally agrees that compliance with an applicable MACT standard promulgated by the EPA under section 112(d) or section 112(h) also would constitute compliance with section 112(g). Although section 112(g) requires an administrative determination that MACT will be met whenever a major source is constructed, reconstructed, or modified, a case-by-case MACT determination is required under section 112(g) only when no applicable emission limitations have been established by the EPA. The forthcoming rulemaking for section 112(g) will clarify the streamlined nature of the section 112(g) administrative requirements for major sources subject to already promulgated standards.

Several commenters were confused by the last sentence in proposed § 63.5(b)(6) that "this paragraph is not intended to implement the modification provisions of section 112(g) of the Act." One commenter asked what this paragraph was intended to implement if not section 112(g).

Section 63.5(b) is intended to clarify the general compliance requirements imposed by section 112 for sources subject to a relevant emission standard that has been promulgated in part 63 (which may be major or area sources). The emission units or emission points that are subject to a NESHAP in a part 63 subpart applicable to a specific source category are defined in each subpart and are designated as the affected source. The intent of § 63.5(b)(6) is simply to emphasize that changes to an affected source (e.g., process changes or equipment additions) that are within the definition of affected source in the applicable subpart are considered to be part of that affected source and, therefore, they also are subject to the standard. In the final rule, additional language was added to § 63.5(b)(6) to further clarify that if the change consists of the addition of a new affected source, the new affected source would be subject to requirements established in the standard for new sources.

Section 112(g) requirements are much broader and different in that they address changes to a major source, regardless of whether a relevant emission limitation has been promulgated by the EPA. These broader requirements are being addressed in the separate rulemaking to implement section 112(g).

Upon review of the wording of the proposed General Provisions, the EPA has concluded that the statement in proposed § 63.5(b)(6) indicating that this paragraph is not intended to implement section 112(g) creates confusion rather than clarifying the Agency's intent. Therefore, it has been removed in the final rule.

The relationship between the General Provisions and section 112(i)(5) of the Act also has been clarified in the final rule. Section 112(i)(5) of the Act outlines provisions for extensions of compliance for sources that achieve early reductions in HAP emissions. Under these provisions, an existing source may comply with an emission limitation promulgated pursuant to section 112(d) 6 years after the compliance date, provided that the source achieves a 90 percent (95 percent, in the case of particulates) reduction in emissions before the otherwise applicable standard is first proposed. Regulations implementing section 112(i)(5) are contained in subpart D of part 63.

Section 63.1(c)(4) of the General Provisions addresses the applicability of the General Provisions to such sources, and it has been revised in the final rule. The revision to this section reflects the fact that the General Provisions are applicable to other requirements established pursuant to section 112 of the Act, except when overridden. The proposed language required that an owner or operator comply with the

requirements of subpart A that are specifically addressed in the extension of compliance. In the final rule, § 63.1(c)(4) has been revised to state that an owner or operator who has received an extension of compliance under the early reduction program in subpart D shall comply with all requirements in the General Provisions except those requirements that are specifically overridden in the extension of compliance. This revision to the rule clarifies the Agency's intended relationship between these two subparts of part 63.

3. State Options Under Section 112(l) of the Act

Several comments were received that States should be allowed flexibility in implementing the requirements of the General Provisions. General flexibility was requested as well as flexibility in implementing specific aspects such as frequency of source reporting and action timelines that may be impractical for some States. One commenter stated that incorporation of the General Provisions into an existing State or local program will interfere with the existing program. Another commenter stated that existing State procedures and timelines for preconstruction review should supersede the General Provisions.

The EPA believes that the opportunity for States to have flexibility in implementing the General Provisions is provided through the rulemaking that implements section 112(l) of the Act (see subpart E of part 63). Under subpart E of part 63, each State may develop and submit to the EPA for approval a program for the implementation and enforcement of emission standards and other requirements promulgated under section 112. The EPA may approve alternative requirements or programs submitted by States as long as the State's alternatives are at least as stringent as the Federal programs they replace. Thus, States have the opportunity to propose to the EPA, through the subpart E process, alternative requirements to the General Provisions. Alternative requirements that could be proposed by a State include those items (e.g., timelines and provisions for preconstruction review) cited by commenters on the proposed General Provisions.

An alternative requirement to a General Provisions requirement that is proposed by a State will be reviewed by the EPA to determine if it would accomplish the same objective(s) as the comparable General Provisions requirement and not compromise implementation and enforcement of part 63 emission standards.

Subpart E of part 63 was promulgated in the **Federal Register** on November 26, 1993 (58 FR 62262). This final rulemaking describes in detail the process for a State to receive approval for alternative requirements to those promulgated at the Federal level. Additional guidance on this process is available, and information on how to obtain it is discussed in section V of the subpart E proposal preamble (58 FR 29296, May 19, 1993).

Section 112(d)(7) of the Act and paragraph 63.1(a)(3) of the applicability section of the General Provisions clearly indicate that an emission limit or other applicable requirement more stringent than the General Provisions may be issued under State authority. The EPA believes that this, along with the opportunity provided through subpart E for a State to propose alternative requirements, provides the flexibility that the commenters are seeking without further revision to the General Provisions. The EPA plans to supplement the guidance developed thus far for implementing section 112(l) with additional material to address approval criteria for alternative procedures that may be proposed by a State in place of the General Provisions.

The EPA disagrees with the commenter who stated that existing procedures and timelines for preconstruction review in a State should automatically supersede the General Provisions. States seeking to implement and enforce any provisions of their own programs in lieu of regulations established by the EPA under section 112 must receive approval under section 112(l).

4. Permitting of Section 112 Sources Under Title V

Title V of the Act instructs the EPA to establish the minimum elements of a national air pollution control operating permit program to be implemented by State or local agencies if they qualify. Owners or operators are required to obtain a permit when a State's operating permit program becomes effective. Furthermore, when sources become subject to part 63 regulations, these regulations must be incorporated into the permits for these sources. Permit requirements will be drawn directly from the requirements in Federal regulations such as NESHAP. Thus, the General Provisions in this part will form the basis for specific permit conditions, as they form the basis for specific requirements under subsequent part 63 rulemakings. The part 70 regulations implementing the title V permit program, promulgated at 57 FR 32250 (July 21, 1992), identify when a source of HAP is required to obtain a permit. The promulgated General Provisions contain language that informs owners or operators of some of the situations in which a source of HAP would be required to apply for a permit.

Section 70.3(a) allows States to defer temporarily the requirement to obtain a permit for any sources that are not major sources but would otherwise be subject to title V. If the EPA approves a State program with such a deferral provision, the EPA will complete a future rulemaking to consider the appropriateness of any permanent exemption for categories of nonmajor sources. Nonmajor sources subject to a section 112 standard are addressed in § 70.3(b), which states that the EPA has authority to allow States to exempt or defer these nonmajor sources from permitting requirements, and that the EPA will exercise this authority, if at all, at the time of promulgation of a section 112 standard. Consistent with this provision, the EPA will determine in each future rulemaking under part 63 that establishes an emission standard that affects area sources whether to: (1) Give States the option to exclude area sources affected by that standard from the requirement to obtain a title V permit (i.e., by exempting the category of area sources altogether from the permitting requirement); (2) give States the option to defer permitting of area sources in that category until the EPA takes a rulemaking action to determine applicability of the permitting requirements; or (3) confirm that area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title V permit in all States.

Although the EPA will decide whether and when to permit regulated area sources in each applicable part 63 rulemaking, the Agency believes, in general, that it is appropriate for all sources regulated under part 63 to undergo the title V permitting process, as this will enhance effective implementation and enforcement of the requirements of section 112 of the Act. Unless a determination by the EPA is made by rule that compliance with permitting requirements by regulated area sources would be "impractical, infeasible, or unnecessarily burdensome" and thus an exemption is appropriate or the EPA allows States to exercise their option to defer permitting of area sources, all affected sources under part 63, including area sources, will be required to obtain a permit. Thus, affected area sources will be immediately subject to part 70 when they become subject to a part 63 emission standard. (When area sources

become subject to part 70 they will have up to 12 months to apply for a permit.) Section 63.1(c)(2) of the final General Provisions has been revised to clarify that emission standards established in part 63 will specify what the permitting requirements will be for area sources affected by those standards, and that if a standard remains silent on these matters, then nonmajor sources that are subject to the standard are also subject to the requirement to obtain a title V permit without deferral.

D. Monitoring and Performance Testing Requirements

1. Monitoring

a. *Relationship to part 64.* Some commenters said that the part 63 monitoring requirements are duplicative of the part 64 enhanced monitoring program. Alternatively, other commenters claimed that all of the monitoring requirements should be included in each part 63 subpart.

The proposed part 64 enhanced monitoring program (58 FR 54648, October 22, 1993) applies only to existing regulations and does not apply to new regulations being developed under part 63. Furthermore, the proposed part 64 provisions only apply to major sources, while the General Provisions can apply to area sources as well. The EPA will incorporate the concept of enhanced monitoring directly into all new rules under part 63. This approach is consistent with the statement in the preamble to the part 70 operating permits program (July 21, 1992, 57 FR 32250) that all future rulemakings will have no gaps in their monitoring provisions. The General Provisions include generic requirements that apply to all affected sources, while individual subparts under part 63 will include additional monitoring provisions specific to each source category.

b. *Definition of "continuous monitoring system."* Commenters said that the definitions for CMS and continuous emission monitoring systems (CEMS) are very broad and appear to include total equipment. For example, sample systems may be used to serve several analyzers, all of which are considered one CMS. If one analyzer fails, the proposed rule appears to assume that the entire CMS has failed, and data from properly functioning analyzers may not be used because one analyzer has failed to function properly.

Some commenters said that § 63.8(c)(6) should be revised to clearly distinguish between CEMS, continuous opacity monitoring systems (COMS), and continuous parameter monitors. In particular, the measurement devices used to monitor parameters such as temperature, flow, and pressure are very stable and do not require frequent or ongoing calibration error determinations. One commenter said that language should be added that states: "Continuous parameter monitoring systems (CPMS's) must be calibrated prior to installation and checked daily for indication that the system is responding. If the CPMS includes an internal system check, results must be recorded and checked daily for proper operation."

One commenter said that the EPA should review § 63.8 to amend references to "continuous monitoring systems" whenever a requirement should not apply to continuous parameter monitoring systems.

Another commenter said that the EPA should differentiate between CMS and continuous parameter monitoring systems when setting calibration drift provisions in § 63.8(c)(1).

After review of these comments, the Administrator determined that the definition of "continuous monitoring system" should be clarified. The definition of CMS has been clarified to include any system used to demonstrate compliance with the applicable regulation on a continuous basis in accordance with the specifications for that regulation. The definition has been changed as follows:

> Continuous monitoring system (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

This definition is intended to apply to the CMS required by the regulation for a regulated pollutant or process parameter. If any portion of such a CMS fails (e.g., flow analyzer), the CMS data cannot be used for compliance determination and the entire CMS is out of control. The repair of the faulty portion of the CMS and a subsequent successful performance check of that portion would bring the entire CMS back into operation.

If, for example, the regulation requires a CEMS for each of two pollutants (e.g., SO_2 and NO_x) and the two CEMS share diluent analyzers, failure of one of the pollutant analyzers (e.g., the SO_2 analyzer) would not necessarily put the NO_x CEMS into an out-of-control situation. The distinction is that these are two CEMS, not one. On the other hand, if the diluent analyzer serving both CEMS fails, both CEMS are out of control.

The definition of CMS was revised to include continuous parameter monitoring system with the intent that basic performance requirements that appear in the General Provisions would apply to all CMS including continuous parameter monitoring systems. Responses to other comments and subsequent revisions to the regulation further clarify that performance specifications relevant to certain types of CMS would be proposed and promulgated with accompanying new regulations, and would indicate precisely what performance requirements apply and the frequency of checks, and other requirements, beyond those in the General Provisions.

The general CMS performance requirements outlined in the General Provisions apply to any type of CMS, including continuous parameter monitoring systems. The General Provisions sections that define daily and other periodic performance checks and requirements for CMS consistently refer to applicable performance specifications and individual regulations for procedures and other specific requirements. Individual regulations may include more or less restrictive performance requirements, as appropriate.

c. *Relevance of part 60 performance specifications.* According to some commenters, §§ 63.8(c)(2), (c)(3), and (e)(4) of the proposed General Provisions require continuous monitoring systems to meet existing part 60 performance specifications, which were written for criteria pollutant measurement and contain many items that are not applicable to HAP. New methods, specific to HAP, should be proposed for public comment.

The EPA agrees with the commenters. Therefore, all references to part 60 CEMS performance specifications have been deleted. Specific methods to evaluate CEMS performance will be included within the individual subparts of part 63. It should be noted that, if appropriate, these subparts may refer to Appendix B of part 60. However, in all instances, the required performance specifications for an individual subpart will be subject to public comment upon proposal.

d. *Repair period for continuous monitoring systems.* According to some commenters, the proposed 7-day period for the repair of CMS in § 63.8(c)(1) is too restrictive, for example, in cases where a major component has failed and replacement parts may not be available within 7 days. In addition, when a critical component fails and is replaced,

the entire monitoring system may have to undergo another performance specification test and/or extensive recalibration. These requirements may take up to 14 days to perform. The EPA should clarify that there is no violation in situations where the repairs or adjustments require more than 7 days, so long as the owner or operator responds with reasonable promptness. The adoption of the part 64 approach, which requires the submittal of a corrective action plan and schedule in the event of a monitor failure, would be more reasonable than specifying a specific time period and would increase the consistency between the two rules. Alternatively, a longer time period for repair of systems should be allowed either in the General Provisions or in each individual standard. One commenter said that § 63.8(c) should be revised to allow up to 10 days of downtime per quarter. Finally, the EPA could establish a minimum level of acceptable data collection frequency (e.g., 75 to 95 percent monthly), which would provide up-front time flexibility for repairs and adjustments without compromising environmental benefit.

One commenter said that the EPA must provide downtime for routine maintenance because proper maintenance of the equipment will extend the life of the equipment as well as ensure the quality of data collected by the CMS. Section 63.8(c)(4) should be revised to add the exclusion of maintenance periods from the operation requirements. Another commenter said that the owner or operator should not be required to conduct sampling or daily zero and high-level checks if the manufacturing process is not in operation, and that process shutdowns should be included in the list of "exempted" periods under § 63.8(c)(4). Finally, one commenter said that § 63.8(c)(4) should be revised to include performance evaluations and other quality assurance/quality control activities as exceptions to the downtime reporting requirements.

After consideration of these comments, the EPA has revised § 63.8(c)(1) to require "immediate" repair or replacement of CMS parts that are considered "routine" or otherwise predictable. The startup, shutdown, and malfunction plan required by § 63.6(e)(3) will identify those CMS malfunctions that fall into the "routine" category, and the owner or operator is required to keep the necessary parts for repair of the affected equipment readily available. If the plan is followed and the CMS repaired immediately, this action can be reported in the semiannual startup, shutdown, and malfunction report required under § 63.10(d)(5)(i).

For those events that affect the CMS and are considered atypical (i.e., not addressed by the startup, shutdown, and malfunction plan), the owner or operator must report actions that are not consistent with the startup, shutdown, and malfunction plan within 24 hours after commencing actions inconsistent with the plan. The owner or operator must send a follow-up report within 2 weeks after commencing inconsistent actions that either certifies that corrections have been made or includes a corrective action plan and schedule. This approach is similar to the approach in 40 CFR part 64 regarding monitor failures. The owner or operator should be able to provide proof that repair parts have been ordered or any other records that would indicate that the delay in making repairs is beyond his or her control. Otherwise, it would cause enforcement difficulties to decide when a delay is caused in spite of best efforts and when the delay is caused by less than best efforts. Therefore, all delays beyond the 2-week period may be considered violations. As discussed in section 2.4.8 of the promulgation BID, if the delay is caused by a malfunction and the source follows its malfunction plan, that is not considered a violation.

The Agency agrees with the commenter that routine maintenance of all CMS is necessary and has revised § 63.8(c)(4) to include maintenance periods in the list of periods when CMS are excepted from the monitoring requirements.

2. Performance Testing

a. *Relationship to other testing requirements.* Several commenters had concerns regarding the relationship between the requirements in § 63.7, Performance testing requirements, and the testing requirements that will be contained in other subparts of part 63. One commenter noted a discrepancy between proposed § 63.7(e), which requires performance testing under representative conditions, and § 63.103(b)(3) of the proposed Hazardous Organic NESHAP (HON) (December 31, 1992, 57 FR 62690), which requires performance testing at "maximum" representative operating conditions, and the commenter asked that the EPA either make the performance test requirements consistent for all part 63 subparts or allow sources to defer to the HON requirement. Another commenter indicated that performance tests may not always be meaningful, particularly in situations where the applicable subpart requires the elimination of the use of HAP in the process.

Other commenters stated that methods for performance testing should be defined in each individual NESHAP under part 63 and that methods under analysis by the EPA should be subject to comment by the regulated community. Others objected to reference to methods contained in the appendices of part 60 because they are for measuring criteria pollutants and not HAP.

The testing requirements contained in § 63.7 are general and represent an infrastructure for performance testing as required by the individual standards developed under part 63. The general testing requirements contained in § 63.7 specify when the initial performance test must be conducted, under what operating conditions the test must be conducted, the content of the site-specific test plan, how long the Agency has to review the test plan (if review is required—see next comment), how many runs are needed, procedures for applying for the use of an alternative test method, procedures to request a waiver of the performance test, and other general requirements. Each subpart will include specific testing requirements, such as the test method that must be used to determine compliance, the required duration and frequency of testing, and any other testing requirements unique to that standard.

As described in § 63.7(a)(4), subparts may contain testing provisions that supersede portions of § 63.7. The example in the proposed HON (subpart F) cited by the commenter is a prime illustration of this situation. Section 63.103(b)(3) of the proposed subpart F states that "Performance tests shall be conducted according to the provisions of § 63.7(e), except that performance tests shall be conducted at maximum representative operating conditions for the process * * *." (December 31, 1992, 57 FR 62690). This section clearly states that all of the requirements of § 63.7(e) apply, except that the test must be conducted at maximum operating conditions, instead of at representative conditions, as required by § 63.7(e). It is also possible that the EPA could waive all performance testing requirements for a particular standard if it is determined that performance tests could not be used for determining compliance with the standard, and other procedures, in lieu of performance testing, would be specified for the determination of compliance.

For each subpart, the EPA will evaluate the possibility of using existing test methods that are contained in parts

51, 60, and 61. However, if a previously promulgated method is not appropriate, the EPA will propose a new test method. Any requirement to test for HAP in part 63, other than the requirements in § 63.7, and any new test method(s), will be subject to public comment at the time the standard and method are proposed.

b. *Definition of "representative performance."* Several commenters had concerns regarding the lack of a definition of "representative performance" required for performance test conditions. One commenter said that § 63.7(e) should be revised to reflect maximum design operating conditions that the source or control device will normally experience. Several commenters stated that the source should be allowed to determine representative operating conditions for a performance test. One commenter thought that the source should determine representative operating conditions, subject to EPA approval. Another commenter stated that § 63.7(e)(1) is acceptable as proposed.

The term "representative performance" used in § 63.7(e) means performance of the source that represents "normal operating conditions." At some facilities, normal operating conditions may represent maximum design operating conditions. In any event, representative performance or conditions under which the source will normally operate are established during the initial performance test and will serve as the basis for comparison of representative performance during future performance tests. To clarify this intent, a phrase has been added in § 63.7(e) to indicate that representative performance is that based on normal operating conditions for the source.

c. *Two performance tests.* Commenters said that, for sources constructed with the proposed rule in mind, the EPA should not require two performance tests under § 63.7(a)(2)(ix) if one will suffice. As proposed, § 63.7(a)(2)(ix) requires that, if the owner or operator commences construction or reconstruction after proposal and before promulgation of a part 63 standard and if the promulgated standard is more stringent than the proposed standard, the owner or operator must conduct a performance test to demonstrate compliance with the proposed standard within 120 days of the promulgation (i.e., effective) date and a second performance test within 3 years and 120 days from the effective date of the standard to demonstrate compliance with the promulgated standard. The commenter said that if the source can comply with the more stringent promulgated standard within 120 days of the effective date, it should only be required to perform one test.

The EPA does not believe that an additional performance test is an unreasonable burden, given that the source is allowed an additional 3 years to come into compliance with the promulgated part 63 standard. However, the EPA agrees with the commenter that if the source chooses to comply with the promulgated standard within 180 days (changed from 120 days per the discussion in section IV.G.2.b of this preamble) of the effective date, then a second performance test should not be required. While this was always the intent of this section, the EPA also agrees that this section of the proposed rule could have been interpreted to require two source tests in all situations. Therefore, § 63.7(a)(2)(ix) has been revised to allow owners or operators of new or reconstructed sources the option to comply with the promulgated standards within 180 days after the standard's effective date.

d. *Review of site-specific test plans.* The provisions pertaining to site-specific test plans contained in § 63.7(c)(2) received a great deal of attention from commenters. Several commenters indicated that the level of detail required in the site-specific test plan would create an unreasonable burden. One commenter estimated that it could take up to 2 years to prepare a test plan with the level of detail required in § 63.7(c)(2). Many suggested that site-specific test plans should be required only when there is a deviation from the reference methods.

A number of commenters believe the proposed requirements that every site-specific test plan be submitted to the Agency, and then approved by the Agency within 15 days, would be extremely burdensome for both the owners and operators and regulatory agencies.

As a result of these comments, significant changes have been made to § 63.7(c). Owners or operators still must prepare site-specific test plans, and the required elements of such plans are the same as those proposed. The EPA believes the requirements of the test plan are basic and necessary to ensure that the test will be conducted properly. However, the requirement that all site-specific test plans be submitted to, and approved by, the Administrator has been deleted. The rationale for these decisions is discussed in the following paragraphs.

The Agency believes that test plans should be prepared for all performance tests. The test plan assures that all involved parties understand the objectives and details of the test program. A well-planned test program is vital to ensure that the source is in compliance with the standard. The EPA does not believe that the preparation of site-specific test plans is overly burdensome to facilities. In fact, experienced testing professionals routinely prepare site-specific test plans (including quality assurance programs) that would meet the performance test requirements of § 63.7(c)(2).

In addition, the EPA has created a guideline document, "Preparation and Review of Site-Specific Test Plans" (December 1991) to assist owners, operators, and testing professionals in the preparation of complete site-specific test plans. This guidance can be downloaded from the EPA Office of Air Quality Planning and Standards bulletin board, the Technology Transfer Network (TTN).

Upon review of the comments, particularly those from State and local agencies, the EPA decided that it was appropriate to make significant changes in the provisions requiring submittal and approval of site-specific test plans. As noted above, each affected source owner or operator must prepare a site-specific test plan. However, owners or operators are only required to submit this plan to the Agency for review and approval upon request from the Administrator (or delegated State). In addition, the provisions relating to the approval of site-specific test plans have been modified to allow greater flexibility; that is, the timelines have been modified to allow more time for interim activities performed by both the Administrator and the owner or operator.

In order to be consistent with the changes made regarding performance test plans, the EPA has also revised § 63.8(d)(2) of the General Provisions, and the submittal of a site-specific performance evaluation test plan for the evaluation of CMS performance is also optional at the Administrator's request.

E. Construction and Reconstruction

1. Definition of Reconstruction

In response to comments, the EPA has revised the definition of reconstruction to make it clearer and easier to understand. The revised definition clarifies that reconstruction may refer to an affected or a previously unaffected source that becomes an affected source upon reconstruction. This definition also clarifies that the source must be able to meet the relevant standards established by the Administrator or by a State. Major affected sources, or

previously unaffected major sources that reconstruct to become major affected sources, must undergo preconstruction review in accordance with procedures described in §§ 63.5 (b)(3) and (d). Affected sources that are nonmajor or previously unaffected nonmajor sources that reconstruct must submit a notification in accordance with § 63.5(b)(4), but they are not required to undergo preconstruction review.

2. Construction/Reconstruction Plan Review

Comments also were received on the need for procedures governing the review of construction and reconstruction plans under proposed § 63.5(c). State and local agencies commented that they do not have the resources to conduct optional plan reviews at the source's request, nor did they feel that this is an appropriate requirement for the General Provisions.

Upon review of these comments, the Agency has decided to delete § 63.5(c) from the final rule. While the Agency encourages communication between delegated authorities and owners or operators of new or reconstructed sources that may be affected by a part 63 standard during the preparation of construction/reconstruction applications, the Agency has decided to reduce the burden on State and local agencies by not mandating the informal review of plans in the General Provisions.

One State agency indicated that the General Provisions should allow existing State construction permit programs to be used as the administrative mechanism for performing preconstruction reviews for sources subject to part 63 standards. As discussed in greater detail in section IV.C.3 of this preamble, States can use existing construction permit programs to implement the provisions in § 63.5 if the programs are approved under the section 112(l) approval process developed in subpart E of part 63.

3. Determination of Reconstruction

Several commenters had concerns about the manner in which reconstruction determinations would be made. One commenter indicated that replacements "in-kind" and retrofitting should be exempt from a reconstruction determination. Other commenters felt that the cost of control devices to comply with existing source MACT, reasonably available control technology, or any other emissions standard should not be included.

The reconstruction determination formula is based upon factors outlined in the rule, including a fixed capital cost comparison between a replacement project and a comparable new source. This cost comparison may include the cost of control equipment, consistent with the EPA's existing policy as stated in the December 16, 1975 **Federal Register** notice (see 40 FR 58416) that deals with modification, notification, and reconstruction requirements under 40 CFR part 60. The preamble to that regulation states that:

> The term "fixed capital cost" is defined as the capital needed to provide all the depreciable components and is intended to include such things as the costs of engineering, purchase, and installation of major process equipment, contractors' fees, instrumentation, auxiliary facilities, buildings, and structures. Costs associated with the purchase and installation of air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, etc.) are not considered in estimating the fixed capital cost of a comparable entirely new facility unless that control equipment is required as part of the process (e.g., product recovery).

Retrofitting and replacements are the type of activities to which the reconstruction provisions are intended to apply. In those instances where changes are instigated specifically to comply with a relevant part 63 standard, and the changes are integral to the process, it is not the EPA's intent to penalize existing sources by subjecting them to new source MACT requirements.

4. Application for Approval of Construction or Reconstruction

Several commenters objected to the requirement that new major affected sources submit an application for approval of construction or reconstruction 180 days before construction or reconstruction is planned to commence.

Although the EPA does not agree with the commenters' contention that the 180-day time period is overly burdensome, § 63.5(d)(1)(i) of the final rule has been revised to allow owners and operators of new major affected sources greater discretion in the timing of submitting applications. The final rule requires owners or operators to submit the application "as soon as practicable" before the construction or reconstruction is planned to commence. The burden is on the owner or operator to ensure that the application is submitted in a timely fashion, so that adequate review may take place under the procedures specified in § 63.5(e) and commencement of construction or reconstruction will not be delayed. The EPA believes it is in owners' and operators' best interests to submit preconstruction review applications as early as is feasible. The requirements in § 63.9(b)(4)(i) and § 63.9(b)(5) for a notification of intention to construct or reconstruct a new major affected source or a new affected source have also been revised to reflect this change in the final rule.

F. Operation and Maintenance Requirements: Startup, Shutdown, and Malfunction Plans

1. Content of Plans

Several commenters complained that the § 63.6(e)(3)(i) requirement that the startup, shutdown, and malfunction plan contain detailed "step-by-step" procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction" was overly burdensome and did not allow the facility to devise maintenance actions that would ensure compliance with the relevant emission limitation. In addition, commenters said that the overall level of detail required in the startup, shutdown, and malfunction plan was excessive.

Commenters said that the plan should focus only on equipment that is actually used to achieve and maintain compliance with a relevant standard such as pollution abatement equipment, process equipment used as the last piece of recovery equipment if not followed by emission control equipment, emission or parameter monitoring equipment, and recordkeeping equipment. Also, § 63.6(e)(3)(i) should be revised to clarify that the plan requirements apply to: "malfunctioning process and air pollution equipment used to comply with the relevant standard." Another commenter said that process equipment should not be included in the plan because companies already have adequate incentives to maintain their process equipment.

Another comment concerned the timeframe under which the plan must be developed and implemented. The commenter noted that § 63.6(e)(3)(i) implies that the source might have to develop the plan before the compliance date for the relevant standard or startup.

The EPA intends the startup, shutdown, and malfunction plans to be thorough. On the other hand, the EPA expects these plans to be based on reasonable evaluations by the owner or operator, and the plans are intended to provide flexibility to the owner or operator to act appropriately at all times to reduce emissions during these events. The requirement for "step-by-step" procedures has been deleted because it conveys a level of detail that is not always needed. In addition, the suggestion to limit the requirements to

that equipment that can have an effect on compliance with the relevant standard has been adopted as well. Process equipment may be included, however, because process equipment can affect emissions.

In general, the level of detail is left to the discretion of the owner or operator who must decide how much detail plant personnel need in order to ensure proper operation and maintenance of equipment during startup, shutdown, and malfunction events. Excess emissions occur during these events when air pollution is emitted in quantities greater than anticipated by the applicable standard. Excess emissions are often determined by compliance monitoring required by the applicable standard. If excess emissions are not reasonably anticipated during these events, the plans could be very simple. Alternatively, if excess emissions are expected to occur during startup, shutdown, or malfunction events, the plan needs to be correspondingly detailed to ensure that appropriate actions are taken to control the emissions.

Excess emissions are typically direct indications of noncompliance with the emission standard and, therefore, are directly enforceable. Without demonstrating that a startup, shutdown, or malfunction event caused the excess emissions, the owner or operator cannot certify compliance. In such instances where the excess emissions occurred during a startup, shutdown, or malfunction, the owner or operator must also have followed the plan to certify compliance. If the owner or operator prepares a deficient plan, the EPA can request that the plan be upgraded and may consider enforcement actions.

Section 63.6(e)(3)(i) has been revised to clarify that the plan must be developed before and implemented by the compliance date for the source.

2. Option to Use Standard Operating Procedures

Commenters supported the use of standard operating procedures (SOP) as a surrogate for the development of a separate startup, shutdown, and malfunction plan. However, they pointed out two concerns with the use of SOP. The first potential problem is that SOP generally are very complex (at least at chemical plants), and they are developed to allow the operator to respond to a wide variety of process conditions. Commenters were concerned that an excessive amount of time could be spent in educating permitting agencies regarding the contents of the SOP. A second concern is that SOP may contain confidential business information. Commenters said that the rules should provide that such information will be kept confidential by the Agency.

One commenter noted that facilities covered by Occupational Health and Safety Administration (OSHA) operating requirements should be allowed to use the OSHA plan to meet the intent of § 63.6(e), Operation and maintenance requirements, and file a notification that they are covered by OSHA in place of submitting a startup, shutdown, and malfunction plan. Other plans such as hazardous waste emergency response plans should be accepted as alternatives, too.

A few commenters also asked whether it is necessary to maintain a separate plan if the startup, shutdown, and malfunction plan becomes part of the operating permit. If SOP are used, they could simply be referenced in the operating permit. Alternatively, commenters said that SOP used for startup, shutdown, and malfunction plans should not be required in permits and are not enforceable under part 70.

The intent of allowing the use of SOP is to provide the owner or operator an option of complying with these requirements that may result in reduced recordkeeping burden. If the owner or operator determines that use of SOP is too cumbersome, he or she should develop a specific startup, shutdown, and malfunction plan.

Because the need for startup, shutdown, and malfunction plans is determined by Federal requirements, each plan would be incorporated by reference into the source's part 70 operating permit. As such, the plans would be considered public information; however, confidential business information can be protected according to the procedures in part 70 and § 63.15 of the General Provisions. The EPA believes that, while an owner or operator should not include confidential information in the plan, if certain confidential information is necessary for the plan to be used properly, the owner or operator should discuss the situation with the enforcing agency.

Facilities would be allowed to use an OSHA or other plan (or any portion thereof) in lieu of a startup, shutdown, and malfunction plan only if it meets the requirements in § 63.6(e). The burden is on the source owner or operator to demonstrate that any plan not specifically developed to comply with the requirements in § 63.6(e) meets the intent and all applicable requirements in that section.

3. Reporting Requirements

Some commenters said that startup, shutdown, and malfunction reports should only be required (at least in the case of area sources) when excess/reportable emissions to the atmosphere occurred as a direct result. Commenters requested that the EPA should encourage sources to discover ways not to emit amounts of pollutants in excess of applicable standards, or not to exceed established parametric limits, during periods of startup, shutdown, and malfunctions by inserting the concept of "emissions in excess of an otherwise applicable standard or operation outside of established parametric requirements" into the definitions of startup, shutdown, and malfunction situations. If a source does not experience a period where some emission or parameter requirement is exceeded, no records or reports should be required, according to commenters. In addition, commenters stated that the requirement that a responsible corporate official certify a report of action taken under a startup, shutdown, and malfunction plan is well beyond statutory authority and should be withdrawn.

As discussed below, the EPA has changed the General Provisions to clarify that startup, shutdown, and malfunction reports need only address events that cause emissions in excess of an otherwise applicable standard or operation outside of an established parametric requirement. This change will encourage owners and operators to maintain emissions at all times to the levels required by the standard. When no excess emissions occur under this approach, no records or reports are required. On the other hand, if an owner or operator fails to record the necessary information when excess emissions do occur, they cannot certify compliance with the startup, shutdown, and malfunction plan.

Section 63.10(d)(5) has been revised to allow the reports to be signed by the owner or operator or other responsible official. In some cases, "corporate" officials may not be located at the plant site. Also, smaller companies may not be incorporated and may only have a few employees. For example, dry cleaning facilities are generally small businesses, in which case the owner must sign the report.

Commenters also said that the EPA should provide flexibility to owners and operators in correcting malfunctions rather than requiring that actions be "completely" consistent with the source's startup, shutdown, and malfunction plan. It is impossible for owners and operators to develop plans

that address every conceivable malfunction. Instead, the EPA should require that actions be "materially" consistent with the plan.

One purpose of the startup, shutdown, and malfunction reports is to provide an explanation of why the plan was not followed during a startup, shutdown, or malfunction. Presumably, an owner or operator cannot certify compliance with the standards for such events. In the event of a startup, shutdown, or malfunction, the Agency believes there is value in receiving these reports for actions that are not consistent with the plan. These reports establish an historical record for review by the enforcing agency. However, in order to respond to commenters' concerns, the regulation has been revised to remove the word "completely" from the phrase "completely consistent" in §§ 63.6(e)(3)(iii) and (iv) and § 63.10(b)(2)(v). This revision still satisfies the Agency's intent to receive reports for actions that are not consistent with the plan.

Commenters complained that immediate startup, shutdown, and malfunction reports required under § 63.10(d)(5)(ii) should not be required because they are redundant with respect to reporting requirements found in the Superfund Amendments and Reauthorization Act (section 304) and the Comprehensive Environmental Response, Compensation, and Liability Act (section 103), in the permit rules, and in the individual standards themselves.

The alternate notification systems referred to by the commenter generally are concerned with releases in quantities and under conditions that may not be consistent with the reporting and compliance needs of the authorities delegated the authority to enforce part 63 requirements. To the extent that other reporting mechanisms provide duplicate information, they can be used to satisfy the part 63 requirements. This information would then be compiled in the source's part 70 operating permit.

4. Reporting Timelines

Several commenters suggested changes to the required timelines in § 63.6(e)(3)(iv). In the case of reporting any actions taken that are not "completely consistent with the procedures in the affected source's startup, shutdown, and malfunction plan" within 24 hours, commenters suggested that this requirement should be changed to be "the next working day." Alternatively, the requirement could be changed to be consistent with the title V emergency provisions that require reporting within 2 working days.

Commenters suggested that because an event can last for several days, the requirement to submit a follow-up report should be revised to state that the report is due 7 days "after the end of the event." Other commenters said that only deviations that are significant (e.g., last more than 24 hours) and which fail to correct or which prolong the malfunction should be reportable in writing, and then only within 14 days of the occurrence. Other commenters said that quarterly reports should be sufficient or that no reports should be required if the events are recorded in the source's operating log.

Upon review and consideration of the comments, §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii) have been revised to require reporting of actions that are not consistent with the plan within 2 working days instead of within 24 hours. This allows the General Provisions and the operating permits program established under title V to be consistent. In addition, the regulation has been revised to require that follow-up reports for deviations are due "7 working days after the end of the event."

5. Compliance With Emission Limits

According to some commenters, the EPA should require that affected sources meet otherwise applicable emission limits during startups, shutdowns, and malfunctions. Commenters saw the assumption that emissions can and will occur as inconsistent with the Agency's approach in the part 61 NESHAP, which requires that sources comply with emission limitations at all times. Also, some commenters stated that the EPA has not shown that exceedance of standards is always necessary during these periods or that malfunctions are not avoidable. These commenters believed that difficulties in determining violations do not justify relaxing standards.

Other commenters said that sources should take steps to minimize emissions during startup, shutdown, and malfunction periods. For example, a time limitation on the length of a startup or shutdown could be established. Alternatively, the EPA should exempt facilities from the requirements associated with the startup, shutdown, and malfunction plans if they can comply with the standards during these events. A simple notification that the source intends to comply at all times rather than develop and implement the provisions of § 63.6(e) (i.e., a startup, shutdown, and malfunction plan) should be added to recognize this condition.

In contrast, other commenters wanted to strengthen the assumption that excess emissions during these events is not a violation unless specified in the relevant standard or a determination is made under § 63.6(e)(2) that acceptable operation and maintenance procedures are not being followed.

The EPA believes, as it did at proposal, that the requirement for a startup, shutdown, and malfunction plan is a reasonable bridge between the difficulty associated with determining compliance with an emission standard during these events and a blanket exemption from emission limits. The purpose of the plan is for the source to demonstrate how it will do its reasonable best to maintain compliance with the standards, even during startups, shutdowns, and malfunctions. In addition, individual standards may override these requirements in cases where it is possible to hold sources to stricter standards. In some cases it may be reasonable to require certain source categories to meet the emission standards at all times.

Another point to consider is the beneficial effect of enhanced monitoring. Once enhanced monitoring requirements are effective through the individual standards, owners and operators will be required to pay extremely close attention to the performance of their process and emission control systems. If the enhanced monitoring requirements are generated reflecting normal operational variations, the number of potential noncomplying emissions should be minimized and only truly significant malfunctions will need to be addressed in the plan. Enhanced monitoring should drive sources to continuous good performance that minimizes emissions and, thus, startup, shutdown, and malfunction plans can focus on the less common events. In this way, concerns regarding excess emissions during startups, shutdowns, or malfunctions should lessen.

The EPA agrees that sources that can demonstrate that compliance with the emission standards is not in question during periods of startup, shutdown, and malfunctions should not be required to develop and implement full-blown startup, shutdown, and malfunction plans. Instead, these sources should demonstrate in their startup, shutdown, and malfunction plan why standards cannot be exceeded during periods of startup, shutdown, and malfunction.

In a related matter, the EPA has also clarified § 63.6(e)(1)(i) to state that sources must minimize emissions "at least to the levels required by all

relevant standards" to respond to a commenter's concern that the original language to "minimize emissions" could exceed the requirements of the Act.

G. Recordkeeping and Reporting Requirements

1. Notification Requirements

a. *Applicability.* A significant number of commenters supported the proposed requirement that only affected major and area sources within a category of sources for which a part 63 standard is promulgated be required to submit an initial notification. On the other hand, four commenters believe that all sources, affected and unaffected, should be required to submit an initial notification to identify sources that may be subject to a part 63 standard or other requirement. One of these commenters stated that sources claiming that they are below the major source threshold should notify both the EPA and the State and should submit documentation of their claim (e.g., a copy of the permit showing control requirements). One commenter suggested that delegated agencies should be responsible for identifying affected sources, rather than requiring initial notifications.

In addition, many commenters complained that the initial notification requirement for affected sources was too detailed and suggested a few ways to simplify the initial notification: (1) Include only notification of name and address of owner or operator, address of affected source, and compliance date; or (2) require only a letter of notification identifying subject sources.

The EPA requested comments on the proposed requirement for initial notification by only affected sources within a category of sources, specifically on whether the proposed requirements offer sufficient opportunity for the EPA or delegated agencies to identify sources that may be subject to a part 63 standard, or other requirement, and to review and confirm a source's determination of its applicability status with regard to that standard or requirement. The EPA has evaluated the comments received and has decided that the final General Provisions will require initial notification by only affected sources within a category of sources, the same as proposed. This would reduce the burden on area sources, many of which are small businesses. The implementation of the parts 70 and 71 permit programs will be the process to bring overlooked or noncomplying sources into the regulatory program. In addition, the MACT technical support documents defining the source categories and well-designed toxics emission inventories also will help agencies to identify affected sources. The EPA believes that these mechanisms are sufficient for the EPA or delegated agencies to identify additional sources that may be subject to a part 63 standard or other requirement.

Although only affected sources will be required to submit an initial notification, the EPA has added a requirement for the owner or operator of an unregulated source to keep a record of the applicability determination made for his or her source. Section 63.10(b)(3) requires that an owner or operator who determines that his or her stationary source is not subject to a relevant standard or other provision of part 63 keep a record of this applicability determination. This record must include an analysis demonstrating why the source is unaffected. This information must be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with respect to the relevant part 63 standard or requirement.

In response to the comments requesting simplification of the initial notification requirements for affected sources, the final rule provides that some of the information that the proposed rule would have required in the initial notification be provided later in the notification of compliance status [§ 63.9(h)]. The initial notification will include only the following information: (1) The name and address of the owner or operator; (2) the address (i.e., physical location) of the affected source; (3) an identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date; (4) a brief description of the nature, size, design and method of operation of the source, including its operating design capacity and an identification of each point of emission for each HAP, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each HAP; and (5) a statement of whether the affected source is a major source or an area source.

In addition, § 63.9(h), Notification of compliance status, has been revised to include the information formerly required in the proposed initial notification under § 63.9(b)(2) (v) through (viii).

b. *Duplicate notification submittal.* Some commenters said that the § 63.9(a)(4)(ii) requirement that sources in a State with an approved permit program submit notifications to both the part 70 permitting authority and the relevant EPA Regional Office is unnecessary. A similar requirement is found in § 63.10(a)(4)(ii) regarding report submittal. According to these commenters, once a State has permitting authority, it should have the full authority to receive all notifications and reports.

The rule has been amended to allow EPA Regional Offices the option of waiving the requirement for the source to provide a duplicate copy of notifications and reports. The EPA has tried to limit the amount of duplicate reporting a source is required to do under part 63. However, in some cases it is necessary for both the permitting authority and the Regional Office to receive notifications and reports. Even when the EPA has delegated a program to a permitting authority, the Regional Offices must receive some baseline information to track implementation of the programs and provide guidance for national and regional consistency.

c. *Negotiated schedules.* Section 63.9(i)(2) of the proposed General Provisions, which requires delegated agencies to request in writing a source's permission to take additional time to review information, is inappropriate according to some commenters. Agencies should not have to request additional time to review information.

Upon review and consideration of this comment, the Administrator determined that this proposed provision is in conflict with the Administrator's authority to gather and consider information granted under section 114 of the Act. As a result, this aspect of the negotiated schedule provision has been deleted from the final rule. However, the Administrator also believes that reasonable accommodations regarding schedule negotiations can and should be made between administering agencies and affected sources so long as overall environmental goals are achieved. Language has been added to § 63.9(i)(4) to require agencies to notify sources of delays in schedules and to inform the sources of amended schedules to facilitate communication between the two parties.

2. Timeline Issues

As part of the Agency's evaluation process in developing the final rule, timing issues in general were considered, along with individual comments from industry, State and local agencies, trade associations, and other parties. A summary of the General Provisions as they relate to timelines of the individual requirements is presented in Appendix A of the promulgation BID for the General Provisions. (This summary is too lengthy to include in this preamble.)

The Agency considers these provisions to be significant because they represent the critical path timing constraints to be met by all affected sources.

a. *Compliance extension requests.* Because § 63.6(i)(12)(ii) as proposed only allows a source 15 days to respond to an EPA request for additional information on a compliance extension request, commenters said that the EPA should provide additional time to account for times when additional testing is needed or there are other circumstances that require additional time to prepare a response. Similarly, a 7-day deadline for a source to respond to a notice of an intent to deny a request for extension (§ 63.6(i)(12)(iii)(B)) or a notice that an application is incomplete (§ 63.6(i)(13)(iii)(B)) is insufficient, according to commenters. One commenter said that the time periods should be mutually agreed upon by the owner or operator and the permitting authority. Another commenter said that a simple mechanism for States to alter the timeframes of these and other notification, reporting, and recordkeeping provisions should be added.

Other commenters said that the deadlines for Agency review and responses should be increased.

The majority of the deadlines in §§ 63.6(i)(12) and (i)(13) have been increased to allow additional time for Agency review and for owners or operators to provide additional information. In particular, § 63.6(i)(13)(i) has been changed to allow the Administrator 30 days to notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance. Sections 63.6(i)(12)(i) and (i)(13)(i) have been changed to allow the Administrator 30 days and 15 days, respectively, to notify the owner or operator of the status of his/her application. Sections 63.6(i)(12)(ii) and (i)(13)(ii) have been changed to allow the owner or operator 30 days and 15 days, respectively, to provide additional information after receiving notice of an incomplete application. Sections 63.6(i)(12)(iii)(B) and (i)(13)(iii)(B) have been changed to allow the owner or operator 15 days to provide additional information after receiving notice of an intended denial. Finally, § 63.6(i)(13)(iv) has been revised to allow the Administrator 30 days to issue a final determination.

The increased time periods for review and response may result in some instances where a request for an extension could be denied, leaving the source with very little time to demonstrate compliance under the existing schedule. This may be an issue for sources subject to the section 112(f) residual risk standards, which are to be promulgated 8 years after the section 112(d) MACT standards. However, the EPA believes that the likelihood of this scenario occurring is relatively remote and would only occur under a worst-case situation of one or more requests for additional information and both parties using the full time period allotted for their individual actions. In addition, other changes made to performance test requirements (e.g., a decrease in the performance test notification period and the change to make submission of site-specific test plans for approval at the Agency's discretion) will decrease the lead time required for a source to demonstrate compliance, thus limiting the impacts of a "late" denial of an extension request.

Furthermore, as part of the section 112(l) approval process, State agencies may establish different timelines to allow better coordination with existing State programs, with some exceptions such as compliance dates. Also, as discussed in § 63.9(i), an owner or operator and the permitting agency may mutually agree to schedule changes.

Commenters also stated that the General Provisions should include provisions for a 5-year extension of compliance for installation of BACT or technology to attain LAER pursuant to section 112(i)(6) of the Act.

In response to these comments, the EPA has revised the regulation to incorporate these compliance extensions. Provisions implementing extensions of compliance for installation of BACT or technology to meet LAER are included in the final rule in § 63.6(i)(5).

b. *Performance test deadlines.* Many commenters said that sources should be allowed more than 120 days from startup or other triggering milestones to conduct a performance test. Most suggested 180 days as a more appropriate time period. Hazardous air pollutant performance testing is perceived to be more complicated than performance testing for criteria pollutants. An additional argument is that the part 60 general provisions (§ 60.8(a)) provide 180 days in which to conduct performance tests after startup and that the part 63 requirements should be consistent.

The Agency agrees that, in many cases, 180 days to conduct performance tests may be necessary, and there is also some merit in having the performance testing deadlines in parts 60 and 63 be consistent. Therefore, the EPA has modified § 63.7(a)(2) to set performance test deadlines within 180 days of the effective date of the relevant standards, the initial startup date, or the compliance date, as applicable.

c. *Notification of performance test.* Many commenters felt that the § 63.7(b) requirement that owners or operators submit a notification of a performance test 75 days before the test is scheduled to begin was an excessive period of time. Commenters also said that the observation of the test by the EPA should be optional.

Section 63.7(b) has been revised to reduce the notification period to 60 days. This time period should provide sufficient notice given that the requirement to submit these plans for review and approval is now at the Administrator's discretion (see section IV.D.2.c of this preamble). Observation of the test by the EPA is intended to be optional, and the section has been revised to clarify this point. A similar change was made to § 63.8(e)(2), notice of performance evaluation (for CMS) to allow a 60-day period rather than a 75-day period.

In the same general vein of allowing additional time to comply with the performance testing requirements, the times allowed for an owner or operator to respond to the Administrator's request to review a site-specific test plan under § 63.7(c) and for the Administrator to provide a decision have been changed to allow both parties more time to conduct these activities. The same changes were also made to similar requirements related to site-specific performance evaluation plans under §§ 63.8(d) and (e).

d. *Test results.* Commenters said that § 63.7(g) should be revised to allow more than 45 days for sources to submit the results of performance tests to the appropriate agencies.

Section 63.7(g) has been revised to allow sources 60 days to submit the required performance test results to the enforcing agency.

e. *Initial notification.* Several commenters said that affected sources should be given more than 45 days under § 63.9(b) to provide an initial notification. In many cases, 45 days will not be enough time to learn of the adoption of an emission standard, determine whether the standard is applicable to the source, and file the initial notification. Many commenters suggested 120 days as a more appropriate period. Some noted that the EPA already has proposed under the HON to require the initial notification up to 120 days after the effective date of that rule.

The Agency agrees that many sources will require more time than allowed at proposal to determine whether they are

affected by individual standards and to file the initial notification required by § 63.9(b). Therefore, the initial notification period in the final rule has been increased from 45 days to 120 days after the effective date of standards (or after a source becomes subject to a standard). For most sources, this change will enhance their ability to meet the initial notification requirements and will not affect their ability to meet other milestones, such as conducting any required performance testing and ensuring that the source is in compliance with the standard by the compliance date, which in many cases will be 3 years from the effective date. However, in cases where the existing source compliance date is considerably shorter than the 3-year maximum allowed period or the source in question is a new source that must comply within 180 days of the effective date (or startup), a shorter initial notification period may be set in the individual standards to accommodate those cases where an earlier notification would be desirable from both the source's and the permitting agency's perspective. As discussed in section IV.G.1.a of this preamble, the requirement to submit several pieces of information was removed from the initial notification and added to the compliance status report, which decreases the burden and time required to develop the initial notification. Therefore, the Agency believes that 120 days is adequate for submitting the initial notification.

3. Recordkeeping and Reporting

a. Records retention—length. Several comments were received on § 63.10(b)(1) related to the 5-year record retention period. Some commenters argued that: (1) The EPA has not established a need for a 5-year period, (2) there is no statutory requirement for 5 years of records retention, and consistency with the part 70 provisions is not an adequate basis, and (3) the 5-year records retention requirement is in conflict with EPA policy and the Paperwork Reduction Act. Some commenters suggested that a 2- or 3-year period would be preferable.

In contrast, some commenters supported the 5-year period because it is consistent with the part 70 provisions.

The EPA believes that the 5-year records retention requirement is reasonable and needed for consistency with the part 70 permit program and the 5-year statute of limitations, on which the permit program based its requirement. The retention of records for 5 years would allow the EPA to establish a source's history and patterns of compliance for purposes of determining the appropriate level of enforcement action. The EPA believes, based on prior enforcement history, that the most flagrant violators frequently have violations extending beyond the 5-year statute of limitations. Therefore, the EPA should not be artificially foreclosed, by allowing the destruction of potential evidence of violations, from pursuing the worst violators to the fullest extent of the law because of nonexistent records.

b. *Quarterly reports.* Some commenters opposed the requirement that excess emissions and continuous monitoring systems reports must be submitted quarterly when the CMS data are to be used directly for compliance determination (§ 63.10(e)(3)(i)(B)). Commenters especially objected to this provision when "negative" reports (that show the source is in compliance) would be submitted. Instead, commenters believed that the reports should be submitted semiannually, which is consistent with the requirements of title V. In cases where reporting less frequently than semiannually will not compromise enforcement of a relevant emissions standard, commenters said that the EPA should allow even less frequent reporting.

Other commenters suggested that all sources should be required to report quarterly. According to these commenters, allowing sources to report quarterly at first and later switch to a semiannual or quarterly schedule, depending on compliance status and history, would be confusing and difficult for States to administer. Furthermore, the commenters suggested that only sources that have demonstrated compliance with all requirements of the Act should be allowed to reduce their reporting frequency.

Some commenters stated that if the Agency's current approach is adopted, any request to reduce the frequency of reporting should be deemed approved unless expressly denied within 30 days. Other commenters said that the § 63.10(e)(3)(iii) requirement that the source provide written notification of a reduction in reporting frequency is unwarranted and should be eliminated. Instead, these commenters suggested that the reduction should automatically occur after a year of compliance.

One commenter said that 1 year of data is insufficient to use as a basis for reducing the frequency of reports, while another said that it is inappropriate to use more than the previous year of data collected.

In consideration of these comments, § 63.10(e)(3)(i) has been revised to allow semiannual reports for sources that are using CMS data for compliance but have no excess emissions to report. Quarterly reports still are required when excess emissions occur at sources that use CMS data for compliance, and the frequency of reporting may be reduced only through the procedures described in § 63.10(e)(3)(ii). The Administrator believes that this change will reduce the number of reports and the burden on sources.

Section 63.10(e)(3)(iii) has been revised to clarify that, in the absence of a notice of disapproval of a request to reduce the frequency of excess emissions and continuous monitoring systems reports within 45 days, approval is granted. However, the Administrator believes that excess emissions and compliance parameter monitoring reports are a critical enforcement tool and that any reductions in their frequency should be considered carefully by the implementing agency.

As for the comment that 1 year of data may be inappropriate to use in evaluating a request for a reduction in frequency, the 1-year period is the minimum required for a source to submit a request. Up to 5 years of data may be considered, at the Administrator's discretion. Because of the potential variability among sources and the possible issues associated with an individual source's compliance status (e.g., a history of noncompliance), it is important to preserve the Administrator's discretion in reviewing more extensive data to make a determination.

The EPA is committed to identifying ways to increase industry's flexibility to comply with the part 63 General Provisions where it does not impair achieving environmental objectives. As such, the provisions that allow for a reduction in reporting burden are appropriate. (The part 70 operating permit provisions preclude the EPA from allowing sources to report less frequently than semiannually.) However, the EPA believes that the burden should be on sources to demonstrate ongoing compliance with applicable standards prior to considering a request to reduce the reporting frequency. While the EPA is sensitive to the possible difficulty that sources and States might face in tracking varying reporting schedules, the specific conditions in title V operating permits are intended, in part, to help address the variability among sources.

V. Administrative Requirements

A. Docket

The docket for this rulemaking is A–91–09. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Is likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or

(4) Is likely to raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB suggestions or recommendations will be documented in the public record.

Any written comments from the OMB to the EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES.** The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, (6102), ATTN: Docket No. A–91–09, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

C. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear any reporting and recordkeeping requirements that qualify as an "information collection request" under the PRA. Approval of an information collection request is not required for this rulemaking because, for sources affected by section 112 only, the General Provisions do not require any activities until source category-specific standards have been promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the General Provisions for each source category covered by part 63 will be estimated when a standard applicable to such category is promulgated.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that have "significant impact on a substantial number of small entities." Small entities are small businesses, organizations, and governmental jurisdictions. This analysis is not necessary for this rulemaking, however, because it is unknown at this time which requirements from the General Provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the General Provisions will be assessed when emission standards affecting those sources are developed.

List of Subjects

40 CFR Part 60

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 61

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 63

Environmental Protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.1 is amended by adding paragraph (c) to read as follows:

§ 60.1 Applicability.

* * * * *

(c) In addition to complying with the provisions of this part, the owner or operator of an affected facility may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act (Act) as amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see part 70 of this chapter.

3. Section 60.2 is amended by revising the definitions of "Act" and "Malfunction" and by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Permit program," "Permitting authority," "State," "Stationary source," and "Title V permit" to read as follows:

§ 60.2 Definitions.

* * * * *

Act means the Clean Air Act (42 U.S.C. 7401 et seq.)

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

* * * * *

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the

requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

* * * * *

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

* * * * *

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part; and/or (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

* * * * *

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

* * * * *

4. In § 60.7, paragraphs (e), (f), and (g) are redesignated as paragraphs (f), (g), and (h), respectively, and new paragraph (e) is added to read as follows:

§ 60.7 Notification and recordkeeping.

* * * * *

(e)(1) Notwithstanding the frequency of reporting requirements specified in paragraph (c) of this section, an owner or operator who is required by an applicable subpart to submit excess emissions and monitoring systems performance reports (and summary reports) on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(i) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected facility's excess emissions and monitoring systems reports submitted to comply with a standard under this part continually demonstrate that the facility is in compliance with the applicable standard;

(ii) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the applicable standard; and

(iii) The Administrator does not object to a reduced frequency of reporting for the affected facility, as provided in paragraph (e)(2) of this section.

(2) The frequency of reporting of excess emissions and monitoring systems performance (and summary) reports may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the required recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

(3) As soon as monitoring data indicate that the affected facility is not in compliance with any emission limitation or operating parameter specified in the applicable standard, the frequency of reporting shall revert to the frequency specified in the applicable standard, and the owner or operator shall submit an excess emissions and monitoring systems performance report (and summary report, if required) at the next appropriate reporting period following the noncomplying event. After demonstrating compliance with the applicable standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard as provided for in paragraphs (e)(1) and (e)(2) of this section.

5. Section 60.19 is added to subpart A to read as follows:

§ 60.19 General notification and reporting requirements.

(a) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(b) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be delivered or postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(c) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such

time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(d) If an owner or operator of an affected facility in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such facility under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(e) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 61, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the applicable subpart in this part, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or part 63 of this chapter standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(f)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (f)(2) and (f)(3) of this section, the owner or operator of an affected facility remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (f)(2) and (f)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

6. The authority citation for part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

7. Section 61.01 is amended by adding paragraph (d) to read as follows:

§ 61.01 List of pollutants and applicability of part 61.

* * * * *

(d) In addition to complying with the provisions of this part, the owner or operator of a stationary source subject to a standard in this part may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act (Act) as amended November 15, 1990 (42 U.S.C. 7661). For more information about obtaining an operating permit see part 70 of this chapter.

* * * * *

8. Section 61.02 is amended by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Permit program," "Permitting authority," "State," and "Title V permit" to read as follows:

§ 61.02 Definitions.

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

* * * * *

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

* * * * *

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

* * * * *

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement:

(1) The provisions of this part; and/or

(2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

* * * * *

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by

a State permitting authority is called a part 70 permit in this part.

* * * * *

9. Section 61.10 is amended by adding paragraphs (e) through (j) to read as follows:

§ 61.10 Source reporting and waiver request.

* * * * *

(e) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(f) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(g) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(h) If an owner or operator of a stationary source in a State with delegated authority is required to submit reports under this part to the State, and if the State has an established timeline for the submission of reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(i) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 60, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part, or 1 year after the source is required to be in compliance with the applicable part 60 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(j)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (j)(2) and (j)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (j)(2) and (j)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

10. The authority citation for part 63 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended by Pub. L. 101–549 (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

11. Part 63 is amended by adding subpart A to read as follows:

Subpart A—General Provisions

Sec.

Subpart A—General Provisions

§ 63.1 Applicability.

(a) *General.* (1) Terms used throughout this part are defined in § 63.2 or in the Clean Air Act (Act) as amended in 1990, except that individual subparts of this part may include specific definitions in addition to or that supersede definitions in § 63.2.

(2) This part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the Act as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more

hazardous air pollutants listed in this part pursuant to section 112(b) of the Act. This section explains the applicability of such standards to sources affected by them. The standards in this part are independent of NESHAP contained in 40 CFR part 61. The NESHAP in part 61 promulgated by signature of the Administrator before November 15, 1990 (i.e., the date of enactment of the Clean Air Act Amendments of 1990) remain in effect until they are amended, if appropriate, and added to this part.

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (including those requirements in part 60 of this chapter), or a standard issued under State authority.

(4) The provisions of this subpart (i.e., subpart A of this part) apply to owners or operators who are subject to subsequent subparts of this part, except when otherwise specified in a particular subpart or in a relevant standard. The general provisions in subpart A eliminate the repetition of requirements applicable to all owners or operators affected by this part. The general provisions in subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

(5) [Reserved]

(6) To obtain the most current list of categories of sources to be regulated under section 112 of the Act, or to obtain the most recent regulation promulgation schedule established pursuant to section 112(e) of the Act, contact the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD–13), Research Triangle Park, North Carolina 27711.

(7) Subpart D of this part contains regulations that address procedures for an owner or operator to obtain an extension of compliance with a relevant standard through an early reduction of emissions of hazardous air pollutants pursuant to section 112(i)(5) of the Act.

(8) Subpart E of this part contains regulations that provide for the establishment of procedures consistent with section 112(l) of the Act for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(9) [Reserved]

(10) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(11) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(12) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in § 63.9(i).

(13) Special provisions set forth under an applicable subpart of this part or in a relevant standard established under this part shall supersede any conflicting provisions of this subpart.

(14) Any standards, limitations, prohibitions, or other federally enforceable requirements established pursuant to procedural regulations in this part (including, but not limited to, equivalent emission limitations established pursuant to section 112(g) of the Act) shall have the force and effect of requirements promulgated in this part and shall be subject to the provisions of this subpart, except when explicitly specified otherwise.

(b) *Initial applicability determination for this part.* (1) The provisions of this part apply to the owner or operator of any stationary source that—

(i) Emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act; and

(ii) Is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part.

(2) In addition to complying with the provisions of this part, the owner or operator of any such source may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Act (42 U.S.C. 7661). For more information about obtaining an operating permit, see part 70 of this chapter.

(3) An owner or operator of a stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants who determines that the source is not subject to a relevant standard or other requirement established under this part, shall keep a record of the applicability determination as specified in § 63.10(b)(3) of this subpart.

(c) *Applicability of this part after a relevant standard has been set under this part.* (1) If a relevant standard has been established under this part, the owner or operator of an affected source shall comply with the provisions of this subpart and the provisions of that standard, except as specified otherwise in this subpart or that standard.

(2) If a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a title V permit from the permitting authority in the State in which the source is located. Emission standards promulgated in this part for area sources will specify whether—

(i) States will have the option to exclude area sources affected by that standard from the requirement to obtain a title V permit (i.e., the standard will exempt the category of area sources altogether from the permitting requirement);

(ii) States will have the option to defer permitting of area sources in that category until the Administrator takes rulemaking action to determine applicability of the permitting requirements; or

(iii) Area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title V permit in all States.

If a standard fails to specify what the permitting requirements will be for area sources affected by that standard, then area sources that are subject to the standard will be subject to the requirement to obtain a title V permit without deferral. If the owner or operator is required to obtain a title V permit, he or she shall apply for such permit in accordance with part 70 of this chapter and applicable State regulations, or in accordance with the regulations contained in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

(3) [Reserved]

(4) If the owner or operator of an existing source obtains an extension of compliance for such source in accordance with the provisions of subpart D of this part, the owner or operator shall comply with all requirements of this subpart except those requirements that are specifically overridden in the extension of compliance for that source.

(5) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source also shall be subject to the notification requirements of this subpart.

(d) [Reserved]

(e) *Applicability of permit program before a relevant standard has been set under this part.* After the effective date of an approved permit program in the State in which a stationary source is (or would be) located, the owner or operator of such source may be required to obtain a title V permit from the permitting authority in that State (or revise such a permit if one has already been issued to the source) before a relevant standard is established under this part. If the owner or operator is required to obtain (or revise) a title V permit, he/she shall apply to obtain (or revise) such permit in accordance with the regulations contained in part 70 of this chapter and applicable State regulations, or the regulations codified in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

§ 63.2 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

Actual emissions is defined in subpart D of this part for the purpose of granting a compliance extension for an early reduction of hazardous air pollutants.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Affected source, for the purposes of this part, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act. Each relevant standard will define the "affected source" for the purposes of that standard. The term "affected source," as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Sources regulated under part 60 or part 61 of this chapter are not affected sources for the purposes of part 63.

Alternative emission limitation means conditions established pursuant to sections 112(i)(5) or 112(i)(6) of the Act by the Administrator or by a State with an approved permit program.

Alternative emission standard means an alternative means of emission limitation that, after notice and opportunity for public comment, has been demonstrated by an owner or operator to the Administrator's satisfaction to achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under a relevant design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act.

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a test method in this chapter and that has been demonstrated to the Administrator's satisfaction, using Method 301 in Appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

Commenced means, with respect to construction or reconstruction of a stationary source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

Compliance date means the date by which an affected source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Compliance plan means a plan that contains all of the following:

(1) A description of the compliance status of the affected source with respect to all applicable requirements established under this part;

(2) A description as follows: (i) For applicable requirements for which the source is in compliance, a statement that the source will continue to comply with such requirements;

(ii) For applicable requirements that the source is required to comply with by a future date, a statement that the source will meet such requirements on a timely basis;

(iii) For applicable requirements for which the source is not in compliance, a narrative description of how the source will achieve compliance with such requirements on a timely basis;

(3) A compliance schedule, as defined in this section; and

(4) A schedule for the submission of certified progress reports no less frequently than every 6 months for affected sources required to have a schedule of compliance to remedy a violation.

Compliance schedule means: (1) In the case of an affected source that is in compliance with all applicable requirements established under this part, a statement that the source will continue to comply with such requirements; or

(2) In the case of an affected source that is required to comply with applicable requirements by a future date, a statement that the source will meet such requirements on a timely basis and, if required by an applicable requirement, a detailed schedule of the dates by which each step toward compliance will be reached; or

(3) In the case of an affected source not in compliance with all applicable requirements established under this part, a schedule of remedial measures, including an enforceable sequence of actions or operations with milestones and a schedule for the submission of certified progress reports, where applicable, leading to compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established pursuant to section 112 of the Act for which the affected source is not in compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

Construction means the on-site fabrication, erection, or installation of an affected source.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of emissions.

Continuous monitoring system (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

Continuous opacity monitoring system (COMS) means a continuous monitoring system that measures the opacity of emissions.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Effective date means: (1) With regard to an emission standard established under this part, the date of promulgation in the Federal Register of such standard; or

(2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part. The effective date of a permit program established under title V of the Act (42 U.S.C. 7661) is determined according to the regulations in this chapter establishing such programs.

Emission standard means a national standard, limitation, prohibition, or other regulation promulgated in a subpart of this part pursuant to sections 112(d), 112(h), or 112(f) of the Act.

Emissions averaging is a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of this part, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emissions from points that are not controlled to the level required by the relevant standard.

EPA means the United States Environmental Protection Agency.

Equivalent emission limitation means the maximum achievable control technology emission limitation (MACT emission limitation) for hazardous air pollutants that the Administrator (or a State with an approved permit program) determines on a case-by-case basis, pursuant to section 112(g) or section 112(j) of the Act, to be equivalent to the emission standard that would apply to an affected source if such standard had been promulgated by the Administrator under this part pursuant to section 112(d) or section 112(h) of the Act.

Excess emissions and continuous monitoring system performance report is a report that must be submitted periodically by an affected source in order to provide data on its compliance with relevant emission limits, operating parameters, and the performance of its continuous parameter monitoring systems.

Existing source means any affected source that is not a new source.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator and citizens under the Act or that are enforceable under other statutes administered by the Administrator. Examples of federally enforceable limitations and conditions include, but are not limited to:

(1) Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to section 112 of the Act as amended in 1990;

(2) New source performance standards established pursuant to section 111 of the Act, and emission standards established pursuant to section 112 of the Act before it was amended in 1990;

(3) All terms and conditions in a title V permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable;

(4) Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP);

(5) Limitations and conditions that are part of a Federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR part 51;

(6) Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the EPA into a SIP as meeting the EPA's minimum criteria for Federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability;

(7) Limitations and conditions in a State rule or program that has been approved by the EPA under subpart E of this part for the purposes of implementing and enforcing section 112; and

(8) Individual consent agreements that the EPA has legal authority to create.

Fixed capital cost means the capital needed to provide all the depreciable components of an existing source.

Fugitive emissions means those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Under section 112 of the Act, all fugitive emissions are to be considered in determining whether a stationary source is a major source.

Hazardous air pollutant means any air pollutant listed in or pursuant to section 112(b) of the Act.

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

Lesser quantity means a quantity of a hazardous air pollutant that is or may be emitted by a stationary source that the Administrator establishes in order to define a major source under an applicable subpart of this part.

Major source means any stationary source or group of stationary sources located within a contiguous area and

under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

New source means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part.

One-hour period, unless otherwise defined in an applicable subpart, means any 60-minute period commencing on the hour.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Performance audit means a procedure to analyze blind samples, the content of which is known by the Administrator, simultaneously with the analysis of performance test samples in order to provide a measure of test data quality.

Performance evaluation means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Permit modification means a change to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S C. 7661).

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

Permit revision means any permit modification or administrative permit amendment to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S.C. 7661).

Permitting authority means: (1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Reconstruction means the replacement of components of an affected or a previously unaffected stationary source to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

Regulation promulgation schedule means the schedule for the promulgation of emission standards under this part, established by the Administrator pursuant to section 112(e) of the Act and published in the **Federal Register**.

Relevant standard means:

(1) An emission standard;

(2) An alternative emission standard;

(3) An alternative emission limitation; or

(4) An equivalent emission limitation established pursuant to section 112 of the Act that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation.

A relevant standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator (or a State) establishes for new or existing sources to which such standard or limitation applies. Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part and all applicable appendices of this part or of other parts of this chapter that are referenced in that standard.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part) applying for or subject to a title V permit: "responsible official" shall have the same meaning as defined in part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part.

Shutdown means the cessation of operation of an affected source for any purpose.

Six-minute period means, with respect to opacity determinations, any one of the 10 equal parts of a 1-hour period.

Standard conditions means a temperature of 293 K (68° F) and a pressure of 101.3 kilopascals (29.92 in. Hg).

Startup means the setting in operation of an affected source for any purpose.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part and/or (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

Test method means the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of this chapter, test methods incorporated by reference in this part, or methods validated for an application through procedures in Method 301 of Appendix A of this part.

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

§ 63.3 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) *System International (SI) units of measure:*

A = ampere
g = gram
Hz = hertz
J = joule
°K = degree Kelvin
kg = kilogram
l = liter
m = meter
m^3 = cubic meter
mg = milligram = 10^{-3} gram
ml = milliliter = 10^{-3} liter
mm = millimeter = 10^{-3} meter
Mg = megagram = 10^6 gram = metric ton
MJ = megajoule
mol = mole
N = newton
ng = nanogram = 10^{-9} gram
nm = nanometer = 10^{-9} meter
Pa = pascal
s = second
V = volt
W = watt
Ω = ohm
µg = microgram = 10^{-6} gram
µl = microliter = 10^{-6} liter

(b) *Other units of measure:*

Btu = British thermal unit
°C = degree Celsius (centigrade)
cal = calorie
cfm = cubic feet per minute
cc = cubic centimeter
cu ft = cubic feet
d = day
dcf = dry cubic feet
dcm = dry cubic meter
dscf = dry cubic feet at standard conditions
dscm = dry cubic meter at standard conditions
eq = equivalent
°F = degree Fahrenheit
ft = feet
ft^2 = square feet
ft^3 = cubic feet
gal = gallon
gr = grain
g-eq = gram equivalent
g-mole = gram mole
hr = hour
in. = inch
in. H_2O = inches of water
K = 1,000
kcal = kilocalorie
lb = pound
lpm = liter per minute
meq = milliequivalent
min = minute
MW = molecular weight
oz = ounces
ppb = parts per billion
ppbw = parts per billion by weight
ppbv = parts per billion by volume
ppm = parts per million
ppmw = parts per million by weight
ppmv = parts per million by volume
psia = pounds per square inch absolute
psig = pounds per square inch gage
°R = degree Rankine
scf = cubic feet at standard conditions
scfh = cubic feet at standard conditions per hour
scm = cubic meter at standard conditions
sec = second
sq ft = square feet
std = at standard conditions
v/v = volume per volume
yd^2 = square yards
yr = year

(c) *Miscellaneous:*

act = actual
avg = average
I.D. = inside diameter
M = molar
N = normal
O.D. = outside diameter
% = percent

§ 63.4 Prohibited activities and circumvention.

(a) *Prohibited activities.* (1) No owner or operator subject to the provisions of this part shall operate any affected source in violation of the requirements of this part except under—

(i) An extension of compliance granted by the Administrator under this part; or

(ii) An extension of compliance granted under this part by a State with an approved permit program; or

(iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) No owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required under this part.

(3) After the effective date of an approved permit program in a State, no owner or operator of an affected source in that State who is required under this part to obtain a title V permit shall operate such source except in compliance with the provisions of this part and the applicable requirements of the permit program in that State.

(4) [Reserved]

(5) An owner or operator of an affected source who is subject to an emission standard promulgated under this part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) of this part (including this subpart) regardless of whether—

(i) A title V permit has been issued to that source; or

(ii) If a title V permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(b) *Circumvention.* No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to—

(1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere;

(2) The use of gaseous diluents to achieve compliance with a relevant standard for visible emissions; and

(3) The fragmentation of an operation such that the operation avoids regulation by a relevant standard.

(c) *Severability.* Notwithstanding any requirement incorporated into a title V

permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

§ 63.5 Construction and reconstruction.

(a) *Applicability.* (1) This section implements the preconstruction review requirements of section 112(i)(1) for sources subject to a relevant emission standard that has been promulgated in this part. In addition, this section includes other requirements for constructed and reconstructed stationary sources that are or become subject to a relevant promulgated emission standard.

(2) After the effective date of a relevant standard promulgated under this part, the requirements in this section apply to owners or operators who construct a new source or reconstruct a source after the proposal date of that standard. New or reconstructed sources that start up before the standard's effective date are not subject to the preconstruction review requirements specified in paragraphs (b)(3), (d), and (e) of this section.

(b) *Requirements for existing, newly constructed, and reconstructed sources.* (1) Upon construction an affected source is subject to relevant standards for new sources, including compliance dates. Upon reconstruction, an affected source is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

(2) [Reserved]

(3) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new major affected source or reconstruct a major affected source subject to such standard, or reconstruct a major source such that the source becomes a major affected source subject to the standard, without obtaining written approval, in advance, from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section.

(4) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new affected source or reconstruct an affected source subject to such standard, or reconstruct a source such that the source becomes an affected source subject to the standard, without notifying the Administrator of the intended construction or reconstruction. The notification shall be submitted in accordance with the procedures in § 63.9(b) and shall include all the information required for an application for approval of construction or reconstruction as specified in paragraph (d) of this section. For major sources, the application for approval of construction or reconstruction may be used to fulfill the notification requirements of this paragraph.

(5) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, no person may operate such source without complying with the provisions of this subpart and the relevant standard unless that person has received an extension of compliance or an exemption from compliance under § 63.6(i) or § 63.6(j) of this subpart.

(6) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard shall be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source. If a new affected source is added to the facility, the new affected source shall be subject to all the provisions of the relevant standard that are established for new sources including compliance dates.

(c) [Reserved]

(d) *Application for approval of construction or reconstruction.* The provisions of this paragraph implement section 112(i)(1) of the Act.

(1) *General application requirements.* (i) An owner or operator who is subject to the requirements of paragraph (b)(3) of this section shall submit to the Administrator an application for approval of the construction of a new major affected source, the reconstruction of a major affected source, or the reconstruction of a major source such that the source becomes a major affected source subject to the standard. The application shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard promulgated in this part. The application shall be submitted as soon as practicable before startup but no later than 60 days after the effective date of a relevant standard promulgated in this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of § 63.9(b)(5) of this subpart. The owner or operator may submit the application for approval well in advance of the date construction or reconstruction is planned to commence in order to ensure a timely review by the Administrator and that the planned commencement date will not be delayed.

(ii) A separate application shall be submitted for each construction or reconstruction. Each application for approval of construction or reconstruction shall include at a minimum:

(A) The applicant's name and address;

(B) A notification of intention to construct a new major affected source or make any physical or operational change to a major affected source that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2;

(C) The address (i.e., physical location) or proposed address of the source;

(D) An identification of the relevant standard that is the basis of the application;

(E) The expected commencement date of the construction or reconstruction;

(F) The expected completion date of the construction or reconstruction;

(G) The anticipated date of (initial) startup of the source;

(H) The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the relevant standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants expected to be emitted by the source reported in units and averaging times specified in the relevant standard. The owner or operator may submit percent reduction information if a relevant standard is established in terms of percent reduction. However, operating parameters, such as flow rate, shall be included in the submission to the extent that they demonstrate performance and compliance; and

(I) [Reserved]

(J) Other information as specified in paragraphs (d)(2) and (d)(3) of this section.

(iii) An owner or operator who submits estimates or preliminary information in place of the actual emissions data and analysis required in paragraphs (d)(1)(ii)(H) and (d)(2) of this section shall submit the actual, measured emissions data and other correct information as soon as available but no later than with the notification of compliance status required in § 63.9(h) [see § 63.9(h)(5)].

(2) *Application for approval of construction.* Each application for approval of construction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each point of emission for each hazardous air pollutant that is emitted (or could be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations. An owner or operator who submits approximations of control efficiencies under this subparagraph shall submit the actual control efficiencies as specified in paragraph (d)(1)(iii) of this section.

(3) *Application for approval of reconstruction.* Each application for approval of reconstruction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section—

(i) A brief description of the affected source and the components that are to be replaced;

(ii) A description of present and proposed emission control systems (i.e., equipment or methods). The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations;

(iii) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new source;

(iv) The estimated life of the affected source after the replacements; and

(v) A discussion of any economic or technical limitations the source may have in complying with relevant standards or other requirements after the proposed replacements. The discussion shall be sufficiently detailed to demonstrate to the Administrator's satisfaction that the technical or economic limitations affect the source's ability to comply with the relevant standard and how they do so.

(vi) If in the application for approval of reconstruction the owner or operator designates the affected source as a reconstructed source and declares that there are no economic or technical limitations to prevent the source from complying with all relevant standards or other requirements, the owner or operator need not submit the information required in subparagraphs (d)(3) (iii) through (v) of this section, above.

(4) *Additional information.* The Administrator may request additional relevant information after the submittal of an application for approval of construction or reconstruction.

(e) *Approval of construction or reconstruction.* (1)(i) If the Administrator determines that, if properly constructed, or reconstructed, and operated, a new or existing source for which an application under paragraph (d) of this section was submitted will not cause emissions in violation of the relevant standard(s) and any other federally enforceable requirements, the Administrator will approve the construction or reconstruction.

(ii) In addition, in the case of reconstruction, the Administrator's determination under this paragraph will be based on:

(A) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new source;

(B) The estimated life of the source after the replacements compared to the life of a comparable entirely new source;

(C) The extent to which the components being replaced cause or contribute to the emissions from the source; and

(D) Any economic or technical limitations on compliance with relevant standards that are inherent in the proposed replacements.

(2)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 60 calendar days after receipt of sufficient information to evaluate an application submitted under paragraph (d) of this section. The 60-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(3) Before denying any application for approval of construction or reconstruction, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with—

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator to enable further action on the application.

(4) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 calendar days of presentation of additional information or arguments (if the application is complete), or within 60 calendar days after the final date specified for presentation if no presentation is made.

(5) Neither the submission of an application for approval nor the Administrator's approval of construction or reconstruction shall—

(i) Relieve an owner or operator of legal responsibility for compliance with

any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(ii) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(f) *Approval of construction or reconstruction based on prior State preconstruction review.* (1) The Administrator may approve an application for construction or reconstruction specified in paragraphs (b)(3) and (d) of this section if the owner or operator of a new or reconstructed source who is subject to such requirement demonstrates to the Administrator's satisfaction that the following conditions have been (or will be) met:

(i) The owner or operator of the new or reconstructed source has undergone a preconstruction review and approval process in the State in which the source is (or would be) located before the promulgation date of the relevant standard and has received a federally enforceable construction permit that contains a finding that the source will meet the relevant emission standard as proposed, if the source is properly built and operated;

(ii) In making its finding, the State has considered factors substantially equivalent to those specified in paragraph (e)(1) of this section; and either

(iii) The promulgated standard is no more stringent than the proposed standard in any relevant aspect that would affect the Administrator's decision to approve or disapprove an application for approval of construction or reconstruction under this section; or

(iv) The promulgated standard is more stringent than the proposed standard but the owner or operator will comply with the standard as proposed during the 3-year period immediately following the effective date of the standard as allowed for in § 63.6(b)(3) of this subpart.

(2) The owner or operator shall submit to the Administrator the request for approval of construction or reconstruction under this paragraph no later than the application deadline specified in paragraph (d)(1) of this section [see also § 63.9(b)(2) of this subpart]. The owner or operator shall include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in paragraph (e) of this section. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction under this paragraph.

§ 63.6 Compliance with standards and maintenance requirements.

(a) *Applicability.* (1) The requirements in this section apply to owners or operators of affected sources for which any relevant standard has been established pursuant to section 112 of the Act unless—

(i) The Administrator (or a State with an approved permit program) has granted an extension of compliance consistent with paragraph (i) of this section; or

(ii) The President has granted an exemption from compliance with any relevant standard in accordance with section 112(i)(4) of the Act.

(2) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source, such source shall be subject to the relevant emission standard or other requirement.

(b) *Compliance dates for new and reconstructed sources.* (1) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup before the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(f), or 112(h) of the Act shall comply with such standard not later than the standard's effective date.

(2) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(f), or 112(h) of the Act shall comply with such standard upon startup of the source.

(3) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established under this part pursuant to sections 112(d), 112(f), or 112(h) of the Act but before the effective date (that is, promulgation) of such standard shall comply with the relevant emission standard not later than the date 3 years after the effective date if:

(i) The promulgated standard (that is, the relevant standard) is more stringent than the proposed standard; and

(ii) The owner or operator complies with the standard as proposed during the 3-year period immediately after the effective date.

(4) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to section 112(f) shall comply with the emission standard under section 112(f) not later than the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator shall comply with the standard as provided in paragraphs (b)(1) and (b)(2) of this section.

(5) The owner or operator of a new source that is subject to the compliance requirements of paragraph (b)(3) or paragraph (b)(4) of this section shall notify the Administrator in accordance with § 63.9(d) of this subpart.

(6) [Reserved]

(7) After the effective date of an emission standard promulgated under this part, the owner or operator of an unaffected new area source (i.e., an area source for which construction or reconstruction was commenced after the proposal date of the standard) that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source that is subject to the emission standard, shall comply with the relevant emission standard immediately upon becoming a major source. This compliance date shall apply to new area sources that become affected major sources regardless of whether the new area source previously was affected by that standard. The new affected major source shall comply with all requirements of that standard that affect new sources.

(c) *Compliance dates for existing sources.* (1) After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part. Except as otherwise provided for in section 112 of the Act, in no case will the compliance date established for an existing source in an applicable subpart of this part exceed 3 years after the effective date of such standard.

(2) After the effective date of a relevant standard established under this part pursuant to section 112(f) of the Act, the owner or operator of an existing source shall comply with such standard

not later than 90 days after the standard's effective date unless the Administrator has granted an extension to the source under paragraph (i)(4)(ii) of this section.

(3)–(4) [Reserved]

(5) After the effective date of an emission standard promulgated under this part, the owner or operator of an unaffected existing area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source that is subject to the emission standard shall comply by the date specified in the standard for existing area sources that become major sources. If no such compliance date is specified in the standard, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in that standard for other existing sources. This compliance period shall apply to existing area sources that become affected major sources regardless of whether the existing area source previously was affected by that standard. Notwithstanding the previous two sentences, however, if the existing area source becomes a major source by the addition of a new affected source or by reconstructing, the portion of the existing facility that is a new affected source or a reconstructed source shall comply with all requirements of that standard that affect new sources, including the compliance date for new sources.

(d) [Reserved]

(e) *Operation and maintenance requirements.* (1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards.

(ii) Malfunctions shall be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section.

(iii) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(2) Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures [including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section], review of operation and maintenance records, and inspection of the source.

(3) *Startup, Shutdown, and Malfunction Plan.* (i) The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. As required under § 63.8(c)(1)(i), the plan shall identify all routine or otherwise predictable CMS malfunctions. This plan shall be developed by the owner or operator by the source's compliance date for that relevant standard. The plan shall be incorporated by reference into the source's title V permit. The purpose of the startup, shutdown, and malfunction plan is to—

(A) Ensure that, at all times, owners or operators operate and maintain affected sources, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards;

(B) Ensure that owners or operators are prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of hazardous air pollutants; and

(C) Reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(ii) During periods of startup, shutdown, and malfunction, the owner or operator of an affected source shall operate and maintain such source (including associated air pollution control equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (e)(3)(i) of this section.

(iii) When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall keep records for that event that demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping, that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator shall keep records of these events as specified in § 63.10(b) (and elsewhere in this part), including records of the occurrence and duration of each startup, shutdown, or malfunction of operation and each malfunction of the air pollution control equipment. Furthermore, the owner or operator shall confirm that actions taken during the relevant reporting period during periods of startup, shutdown, and malfunction were consistent with the affected source's startup, shutdown and malfunction plan in the semiannual (or more frequent) startup, shutdown, and malfunction report required in § 63.10(d)(5).

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall record the actions taken for that event and shall report such actions within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator [see § 63.10(d)(5)(ii)].

(v) The owner or operator shall keep the written startup, shutdown, and malfunction plan on record after it is developed to be made available for inspection, upon request, by the Administrator for the life of the affected source or until the affected source is no longer subject to the provisions of this part. In addition, if the startup, shutdown, and malfunction plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the startup, shutdown, and malfunction plan on record, to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan.

(vi) To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans

meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(vii) Based on the results of a determination made under paragraph (e)(2) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

(A) Does not address a startup, shutdown, or malfunction event that has occurred;

(B) Fails to provide for the operation of the source (including associated air pollution control equipment) during a startup, shutdown, or malfunction event in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards; or

(C) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable.

(viii) If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control equipment.

(f) *Compliance with nonopacity emission standards*—(1) *Applicability.* The nonopacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) The Administrator will determine compliance with nonopacity emission standards in this part based on the results of performance tests conducted according to the procedures in § 63.7, unless otherwise specified in an applicable subpart of this part.

(ii) The Administrator will determine compliance with nonopacity emission standards in this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in § 63.6(e) and applicable subparts of this part.

(iii) If an affected source conducts performance testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The performance test was conducted within a reasonable amount of time before an initial performance test is required to be conducted under the relevant standard;

(B) The performance test was conducted under representative operating conditions for the source;

(C) The performance test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e) of this subpart; and

(D) The performance test was appropriately quality-assured, as specified in § 63.7(c) of this subpart.

(iv) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by review of records, inspection of the source, and other procedures specified in applicable subparts of this part.

(v) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in paragraph (e) of this section and applicable subparts of this part.

(3) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with a nonopacity emission standard, as specified in paragraphs (f)(1) and (f)(2) of this section, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(g) *Use of an alternative nonopacity emission standard.* (1) If, in the Administrator's judgment, an owner or operator of an affected source has established that an alternative means of emission limitation will achieve a reduction in emissions of a hazardous air pollutant from an affected source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative emission standard for purposes of compliance with the promulgated standard. Any **Federal Register** notice under this paragraph shall be published only after the public is notified and given the opportunity to comment. Such notice will restrict the permission to the stationary source(s) or category(ies) of sources from which the alternative emission standard will achieve equivalent emission reductions. The Administrator will condition permission in such notice on requirements to assure the proper operation and maintenance of equipment and practices required for compliance with the alternative emission standard and other requirements, including appropriate quality assurance and quality control requirements, that are deemed necessary.

(2) An owner or operator requesting permission under this paragraph shall, unless otherwise specified in an applicable subpart, submit a proposed test plan or the results of testing and monitoring in accordance with § 63.7 and § 63.8, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring. Any testing or monitoring conducted to request permission to use an alternative nonopacity emission standard shall be appropriately quality assured and quality controlled, as specified in § 63.7 and § 63.8.

(3) The Administrator may establish general procedures in an applicable subpart that accomplish the requirements of paragraphs (g)(1) and (g)(2) of this section.

(h) *Compliance with opacity and visible emission standards*—(1) *Applicability.* The opacity and visible emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) The Administrator will determine compliance with opacity and visible emission standards in this part based on the results of the test method specified in an applicable subpart. Whenever a continuous opacity monitoring system (COMS) is required to be installed to determine compliance with numerical opacity emission

standards in this part, compliance with opacity emission standards in this part shall be determined by using the results from the COMS. Whenever an opacity emission test method is not specified, compliance with opacity emission standards in this part shall be determined by conducting observations in accordance with Test Method 9 in appendix A of part 60 of this chapter or the method specified in paragraph (h)(7)(ii) of this section. Whenever a visible emission test method is not specified, compliance with visible emission standards in this part shall be determined by conducting observations in accordance with Test Method 22 in appendix A of part 60 of this chapter.

(ii) [Reserved]

(iii) If an affected source undergoes opacity or visible emission testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The opacity or visible emission test was conducted within a reasonable amount of time before a performance test is required to be conducted under the relevant standard;

(B) The opacity or visible emission test was conducted under representative operating conditions for the source;

(C) The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e) of this subpart; and

(D) The opacity or visible emission test was appropriately quality-assured, as specified in § 63.7(c) of this section.

(3) [Reserved]

(4) *Notification of opacity or visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting opacity or visible emission observations in accordance with § 63.9(f), if such observations are required for the source by a relevant standard.

(5) *Conduct of opacity or visible emission observations.* When a relevant standard under this part includes an opacity or visible emission standard, the owner or operator of an affected source shall comply with the following:

(i) For the purpose of demonstrating initial compliance, opacity or visible emission observations shall be conducted concurrently with the initial performance test required in § 63.7 unless one of the following conditions applies:

(A) If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 60 days after achieving the maximum production rate at which a new or reconstructed source will be operated, but not later than 120 days after initial startup of the source, or within 120 days after the effective date of the relevant standard in the case of new sources that start up before the standard's effective date. If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 120 days after the compliance date for an existing or modified source; or

(B) If visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, or within the time period specified in paragraph (h)(5)(i)(A) of this section, the source's owner or operator shall reschedule the opacity or visible emission observations as soon after the initial performance test, or time period, as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. The rescheduled opacity or visible emission observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under § 63.7. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity or visible emission observations from being made concurrently with the initial performance test in accordance with procedures contained in Test Method 9 or Test Method 22 in Appendix A of part 60 of this chapter.

(ii) For the purpose of demonstrating initial compliance, the minimum total time of opacity observations shall be 3 hours (30 6-minute averages) for the performance test or other required set of observations (e.g., for fugitive-type emission sources subject only to an opacity emission standard).

(iii) The owner or operator of an affected source to which an opacity or visible emission standard in this part applies shall conduct opacity or visible emission observations in accordance with the provisions of this section, record the results of the evaluation of emissions, and report to the Administrator the opacity or visible emission results in accordance with the provisions of § 63.10(d).

(iv) [Reserved]

(v) Opacity readings of portions of plumes that contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity emission standards.

(6) *Availability of records.* The owner or operator of an affected source shall make available, upon request by the Administrator, such records that the Administrator deems necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification.

(7) *Use of a continuous opacity monitoring system.*

(i) The owner or operator of an affected source required to use a continuous opacity monitoring system (COMS) shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results in accordance with the provisions of § 63.10(e)(4).

(ii) Whenever an opacity emission test method has not been specified in an applicable subpart, or an owner or operator of an affected source is required to conduct Test Method 9 observations (see Appendix A of part 60 of this chapter), the owner or operator may submit, for compliance purposes, COMS data results produced during any performance test required under § 63.7 in lieu of Method 9 data. If the owner or operator elects to submit COMS data for compliance with the opacity emission standard, he or she shall notify the Administrator of that decision, in writing, simultaneously with the notification under § 63.7(b) of the date the performance test is scheduled to begin. Once the owner or operator of an affected source has notified the Administrator to that effect, the COMS data results will be used to determine opacity compliance during subsequent performance tests required under § 63.7, unless the owner or operator notifies the Administrator in writing to the contrary not later than with the notification under § 63.7(b) of the date the subsequent performance test is scheduled to begin.

(iii) For the purposes of determining compliance with the opacity emission standard during a performance test required under § 63.7 using COMS data, the COMS data shall be reduced to 6-minute averages over the duration of the mass emission performance test.

(iv) The owner or operator of an affected source using a COMS for compliance purposes is responsible for demonstrating that he/she has complied with the performance evaluation requirements of § 63.8(e), that the COMS has been properly maintained, operated, and data quality-assured, as specified in § 63.8(c) and § 63.8(d), and that the resulting data have not been altered in any way.

(v) Except as provided in paragraph (h)(7)(ii) of this section, the results of continuous monitoring by a COMS that indicate that the opacity at the time visual observations were made was not in excess of the emission standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the affected source proves that, at the time of the alleged violation, the instrument used was properly maintained, as specified in § 63.8(c), and met Performance Specification 1 in Appendix B of part 60 of this chapter, and that the resulting data have not been altered in any way.

(8) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with an opacity or visible emission standard upon obtaining all the compliance information required by the relevant standard (including the written reports of the results of the performance tests required by § 63.7, the results of Test Method 9 or another required opacity or visible emission test method, the observer certification required by paragraph (h)(6) of this section, and the continuous opacity monitoring system results, whichever is/are applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(9) *Adjustment to an opacity emission standard.*

(i) If the Administrator finds under paragraph (h)(8) of this section that an affected source is in compliance with all relevant standards for which initial performance tests were conducted under § 63.7, but during the time such performance tests were conducted fails to meet any relevant opacity emission standard, the owner or operator of such source may petition the Administrator to make appropriate adjustment to the opacity emission standard for the affected source. Until the Administrator notifies the owner or operator of the appropriate adjustment, the relevant opacity emission standard remains applicable.

(ii) The Administrator may grant such a petition upon a demonstration by the owner or operator that—

(A) The affected source and its associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests;

(B) The performance tests were performed under the conditions established by the Administrator; and

(C) The affected source and its associated air pollution control equipment were incapable of being adjusted or operated to meet the relevant opacity emission standard.

(iii) The Administrator will establish an adjusted opacity emission standard for the affected source meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity emission standard at all times during which the source is meeting the mass or concentration emission standard. The Administrator will promulgate the new opacity emission standard in the **Federal Register**.

(iv) After the Administrator promulgates an adjusted opacity emission standard for an affected source, the owner or operator of such source shall be subject to the new opacity emission standard, and the new opacity emission standard shall apply to such source during any subsequent performance tests.

(i) *Extension of compliance with emission standards.* (1) Until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph, the owner or operator of an affected source subject to the requirements of this section shall comply with all applicable requirements of this part.

(2) *Extension of compliance for early reductions and other reductions*—(i) *Early reductions.* Pursuant to section 112(i)(5) of the Act, if the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of subpart D of this part, the Administrator (or the State with an approved permit program) will grant the owner or operator an extension of compliance with specific requirements of this part, as specified in subpart D.

(ii) *Other reductions.* Pursuant to section 112(i)(6) of the Act, if the owner or operator of an existing source has installed best available control technology (BACT) [as defined in section 169(3) of the Act] or technology required to meet a lowest achievable emission rate (LAER) (as defined in section 171 of the Act) prior to the promulgation of an emission standard in this part applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to the BACT or LAER installation, the Administrator will grant the owner or operator an extension of compliance with such emission standard that will apply until the date 5 years after the date on which such installation was achieved, as determined by the Administrator.

(3) *Request for extension of compliance.* Paragraphs (i)(4) through (i)(7) of this section concern requests for an extension of compliance with a relevant standard under this part [except requests for an extension of compliance under paragraph (i)(2)(i) of this section will be handled through procedures specified in subpart D of this part].

(4)(i)(A) The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State, when the State has an approved part 70 permit program and the source is required to obtain a part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 1-year extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. The owner or operator of an affected source who has requested an extension of compliance under this paragraph and who is otherwise required to obtain a title V permit shall apply for such permit or apply to have the source's title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph will be incorporated into the affected source's title V permit according to the provisions of part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) Any request under this paragraph for an extension of compliance with a relevant standard shall be submitted in writing to the appropriate authority not later than 12 months before the affected source's compliance date [as specified in paragraphs (b) and (c) of this section] for sources that are not including emission points in an emissions average, or not later than 18 months before the affected source's compliance date [as specified in paragraphs (b) and (c) of this section] for sources that are including emission points in an emissions average. Emission standards established under this part may specify alternative dates for the submittal of

requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards, e.g., a compliance date specified by the standard is less than 12 (or 18) months after the standard's effective date.

(ii) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 15 calendar days after the effective date of the relevant standard.

(5) The owner or operator of an existing source that has installed BACT or technology required to meet LAER [as specified in paragraph (i)(2)(ii) of this section] prior to the promulgation of a relevant emission standard in this part may request that the Administrator grant an extension allowing the source 5 years from the date on which such installation was achieved, as determined by the Administrator, to comply with the standard. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 120 days after the promulgation date of the standard. The Administrator may grant such an extension if he or she finds that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(6)(i) The request for a compliance extension under paragraph (i)(4) of this section shall include the following information:

(A) A description of the controls to be installed to comply with the standard;

(B) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(*1*) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(*2*) The date by which on-site construction, installation of emission control equipment, or a process change is to be initiated;

(*3*) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(*4*) The date by which final compliance is to be achieved;

(C) A description of interim emission control steps that will be taken during the extension period, including milestones to assure proper operation and maintenance of emission control and process equipment; and

(D) Whether the owner or operator is also requesting an extension of other applicable requirements (e.g., performance testing requirements).

(ii) The request for a compliance extension under paragraph (i)(5) of this section shall include all information needed to demonstrate to the Administrator's satisfaction that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(7) Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(8) *Approval of request for extension of compliance.* Paragraphs (i)(9) through (i)(14) of this section concern approval of an extension of compliance requested under paragraphs (i)(4) through (i)(6) of this section.

(9) Based on the information provided in any request made under paragraphs (i)(4) through (i)(6) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with an emission standard, as specified in paragraphs (i)(4) and (i)(5) of this section.

(10) The extension will be in writing and will—

(i) Identify each affected source covered by the extension;

(ii) Specify the termination date of the extension;

(iii) Specify the dates by which steps toward compliance are to be taken, if appropriate;

(iv) Specify other applicable requirements to which the compliance extension applies (e.g., performance tests); and

(v)(A) Under paragraph (i)(4), specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period; or

(B) Under paragraph (i)(5), specify any additional conditions that the Administrator deems necessary to assure the proper operation and maintenance of the installed controls during the extension period.

(11) The owner or operator of an existing source that has been granted an extension of compliance under paragraph (i)(10) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they shall be submitted will be specified in the written extension of compliance granted under paragraph (i)(10) of this section.

(12)(i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(i) or (i)(5) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing,

within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(iv) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(13)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(ii) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 15 calendar days after receipt of the original application and within 15 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraphs (i)(10)(iii) or (i)(10)(iv) of this section is not met.

(15) [Reserved]

(16) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(j) *Exemption from compliance with emission standards.* The President may exempt any stationary source from compliance with any relevant standard established pursuant to section 112 of the Act for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years.

§ 63.7 Performance testing requirements.

(a) *Applicability and performance test dates.* (1) Unless otherwise specified, this section applies to the owner or operator of an affected source required to do performance testing, or another form of compliance demonstration, under a relevant standard.

(2) If required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source shall perform such tests as follows—

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in an applicable subpart of this part for an existing source subject to an emission standard established pursuant to section 112(d) of the Act, or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance for an existing source that obtains an extension of compliance under § 63.6(i); or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) [see § 63.6(b)(4)]; or

(vii) [Reserved]; or

(viii) [Reserved]; or

(ix) When an emission standard promulgated under this part is more stringent than the standard proposed [see § 63.6(b)(3)], the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date, or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(3) The Administrator may require an owner or operator to conduct performance tests at the affected source at any other time when the action is authorized by section 114 of the Act.

(b) *Notification of performance test.* (1) The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin to allow the Administrator, upon request, to review and approve the site-specific test plan required under paragraph (c) of this section and to have an observer present during the test. Observation of the

performance test by the Administrator is optional.

(2) In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in paragraph (b)(1) of this section, due to unforeseeable circumstances beyond his or her control, the owner or operator shall notify the Administrator within 5 days prior to the scheduled performance test date and specify the date when the performance test is rescheduled. This notification of delay in conducting the performance test shall not relieve the owner or operator of legal responsibility for compliance with any other applicable provisions of this part or with any other applicable Federal, State, or local requirement, nor will it prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(c) *Quality assurance program.* (1) The results of the quality assurance program required in this paragraph will be considered by the Administrator when he/she determines the validity of a performance test.

(2)(i) *Submission of site-specific test plan.* Before conducting a required performance test, the owner or operator of an affected source shall develop and, if requested by the Administrator, shall submit a site-specific test plan to the Administrator for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of test data precision; an example of internal QA is the sampling and analysis of replicate samples.

(iii) The external QA program shall include, at a minimum, application of plans for a test method performance audit (PA) during the performance test. The PA's consist of blind audit samples provided by the Administrator and analyzed during the performance test in order to provide a measure of test data bias. The external QA program may also include systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iv) The owner or operator of an affected source shall submit the site-specific test plan to the Administrator upon the Administrator's request at least 60 calendar days before the performance test is scheduled to take place, that is, simultaneously with the notification of intention to conduct a performance test required under paragraph (b) of this section, or on a mutually agreed upon date.

(v) The Administrator may request additional relevant information after the submittal of a site-specific test plan.

(3) *Approval of site-specific test plan.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the site-specific test plan (if review of the site-specific test plan is requested) within 30 calendar days after receipt of the original plan and within 30 calendar days after receipt of any supplementary information that is submitted under paragraph (c)(3)(i)(B) of this section. Before disapproving any site-specific test plan, the Administrator will notify the applicant of the Administrator's intention to disapprove the plan together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present, within 30 calendar days after he/she is notified of the intended disapproval, additional information to the Administrator before final action on the plan.

(ii) In the event that the Administrator fails to approve or disapprove the site-specific test plan within the time period specified in paragraph (c)(3)(i) of this section, the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the test method(s) specified in the relevant standard, the owner or operator shall conduct the performance test within the time specified in this section using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator shall refrain from conducting the performance test until the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan (if review of the site-specific test plan is requested) or until after the alternative method is approved [see paragraph (f) of this section]. If the Administrator does not approve the site-specific test plan (if review is requested) or the use of the alternative method within 30 days before the test is scheduled to begin, the performance test dates specified in paragraph (a) of this section may be extended such that the owner or operator shall conduct the performance test within 60 calendar days after the Administrator approves the site-specific test plan or after use of the alternative method is approved. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

(iii) Neither the submission of a site-specific test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4)(i) *Performance test method audit program.* The owner or operator shall analyze performance audit (PA) samples during each performance test. The owner or operator shall request performance audit materials 45 days prior to the test date. Cylinder audit gases may be obtained by contacting the Cylinder Audit Coordinator, Quality Assurance Division (MD–77B), Atmospheric Research and Exposure Assessment Laboratory (AREAL), U.S. EPA, Research Triangle Park, North Carolina 27711. All other audit materials may be obtained by contacting the Source Test Audit Coordinator, Quality Assurance Division (MD–77B), AREAL, U.S. EPA, Research Triangle Park, North Carolina 27711.

(ii) The Administrator will have sole discretion to require any subsequent remedial actions of the owner or operator based on the PA results.

(iii) If the Administrator fails to provide required PA materials to an owner or operator of an affected source in time to analyze the PA samples during a performance test, the requirement to conduct a PA under this paragraph shall be waived for such source for that performance test. Waiver under this paragraph of the requirement to conduct a PA for a particular performance test does not constitute a waiver of the requirement to conduct a PA for future required performance tests.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing

source, shall provide performance testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to such source. This includes:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

(e) *Conduct of performance tests.* (1) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under § 63.6(e). Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this section, in each relevant standard, and, if required, in applicable appendices of parts 51, 60, 61, and 63 of this chapter unless the Administrator—

(i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(ii) Approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or

(iii) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(iv) Waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the Administrator's satisfaction that the affected source is in compliance with the relevant standard.

(3) Unless otherwise specified in a relevant standard or test method, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run in the event that—

(i) A sample is accidentally lost after the testing team leaves the site; or

(ii) Conditions occur in which one of the three runs must be discontinued because of forced shutdown; or

(iii) Extreme meteorological conditions occur; or

(iv) Other circumstances occur that are beyond the owner or operator's control.

(4) Nothing in paragraphs (e)(1) through (e)(3) of this section shall be construed to abrogate the Administrator's authority to require testing under section 114 of the Act.

(f) *Use of an alternative test method*—(1) *General.* Until permission to use an alternative test method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) The owner or operator of an affected source required to do performance testing by a relevant standard may use an alternative test method from that specified in the standard provided that the owner or operator—

(i) Notifies the Administrator of his or her intention to use an alternative test method not later than with the submittal of the site-specific test plan (if requested by the Administrator) or at least 60 days before the performance test is scheduled to begin if a site-specific test plan is not submitted;

(ii) Uses Method 301 in Appendix A of this part to validate the alternative test method; and

(iii) Submits the results of the Method 301 validation process along with the notification of intention and the justification for not using the specified test method. The owner or operator may submit the information required in this paragraph well in advance of the deadline specified in paragraph (f)(2)(i) of this section to ensure a timely review by the Administrator in order to meet the performance test date specified in this section or the relevant standard.

(3) The Administrator will determine whether the owner or operator's validation of the proposed alternative test method is adequate when the Administrator approves or disapproves the site-specific test plan required under paragraph (c) of this section. If the Administrator finds reasonable grounds to dispute the results obtained by the Method 301 validation process, the Administrator may require the use of a test method specified in a relevant standard.

(4) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative test method for the purposes of demonstrating compliance with a relevant standard, the Administrator may require the use of a test method specified in a relevant standard.

(5) If the owner or operator uses an alternative test method for an affected source during a required performance test, the owner or operator of such source shall continue to use the alternative test method for subsequent performance tests at that affected source until he or she receives approval from the Administrator to use another test method as allowed under § 63.7(f).

(6) Neither the validation and approval process nor the failure to validate an alternative test method shall abrogate the owner or operator's responsibility to comply with the requirements of this part.

(g) *Data analysis, recordkeeping, and reporting.* (1) Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Administrator in writing, results of a performance test shall include the analysis of samples, determination of emissions, and raw data. A performance test is "completed" when field sample collection is terminated. The owner or operator of an affected source shall report the results of the performance test to the Administrator before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator [see § 63.9(i)]. The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h). Before a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the Administrator. After a title V permit has

been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the appropriate permitting authority.

(2) [Reserved]

(3) For a minimum of 5 years after a performance test is conducted, the owner or operator shall retain and make available, upon request, for inspection by the Administrator the records or results of such performance test and other data needed to determine emissions from an affected source.

(h) *Waiver of performance tests.* (1) Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Individual performance tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) *Request to waive a performance test.* (i) If a request is made for an extension of compliance under § 63.6(i), the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall be submitted at least 60 days before the performance test if the site-specific test plan under paragraph (c) of this section is not submitted.

(ii) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance report [such as those required under § 63.6(i), § 63.9(h), and § 63.10(e) or specified in a relevant standard or in the source's title V permit], but it shall be submitted at least 60 days before the performance test if the site-specific test plan required under paragraph (c) of this section is not submitted.

(iii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(4) *Approval of request to waive performance test.* The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (h)(3) of this section when he/she—

(i) Approves or denies an extension of compliance under § 63.6(i)(8); or

(ii) Approves or disapproves a site-specific test plan under § 63.7(c)(3); or

(iii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.8 Monitoring requirements.

(a) *Applicability.* (1)(i) Unless otherwise specified in a relevant standard, this section applies to the owner or operator of an affected source required to do monitoring under that standard.

(ii) Relevant standards established under this part will specify monitoring systems, methods, or procedures, monitoring frequency, and other pertinent requirements for source(s) regulated by those standards. This section specifies general monitoring requirements such as those governing the conduct of monitoring and requests to use alternative monitoring methods. In addition, this section specifies detailed requirements that apply to affected sources required to use continuous monitoring systems (CMS) under a relevant standard.

(2) For the purposes of this part, all CMS required under relevant standards shall be subject to the provisions of this section upon promulgation of performance specifications for CMS as specified in the relevant standard or otherwise by the Administrator.

(3) [Reserved]

(4) Additional monitoring requirements for control devices used to comply with provisions in relevant standards of this part are specified in § 63.11.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and the relevant standard(s) unless the Administrator—

(i) Specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(iii) Owners or operators with flares subject to § 63.11(b) are not subject to the requirements of this section unless otherwise specified in the relevant standard.

(2)(i) When the effluents from a single affected source, or from two or more affected sources, are combined before being released to the atmosphere, the owner or operator shall install an applicable CMS on each effluent.

(ii) If the relevant standard is a mass emission standard and the effluent from one affected source is released to the atmosphere through more than one point, the owner or operator shall install an applicable CMS at each emission point unless the installation of fewer systems is—

(A) Approved by the Administrator; or

(B) Provided for in a relevant standard (e.g., instead of requiring that a CMS be installed at each emission point before the effluents from those points are channeled to a common control device, the standard specifies that only one CMS is required to be installed at the vent of the control device).

(3) When more than one CMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CMS. However, when one CMS is used as a backup to another CMS, the owner or operator shall report the results from the CMS used to meet the monitoring requirements of this part. If both such CMS are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CMS for the relevant compliance period.

(c) *Operation and maintenance of continuous monitoring systems.* (1) The owner or operator of an affected source shall maintain and operate each CMS as specified in this section, or in a relevant standard, and in a manner consistent with good air pollution control practices.

(i) The owner or operator of an affected source shall ensure the immediate repair or replacement of CMS parts to correct "routine" or otherwise predictable CMS malfunctions as defined in the source's startup, shutdown, and malfunction

plan required by § 63.6(e)(3). The owner or operator shall keep the necessary parts for routine repairs of the affected equipment readily available. If the plan is followed and the CMS repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report required under § 63.10(d)(5)(i).

(ii) For those malfunctions or other events that affect the CMS and are not addressed by the startup, shutdown, and malfunction plan, the owner or operator shall report actions that are not consistent with the startup, shutdown, and malfunction plan within 24 hours after commencing actions inconsistent with the plan. The owner or operator shall send a follow-up report within 2 weeks after commencing actions inconsistent with the plan that either certifies that corrections have been made or includes a corrective action plan and schedule. The owner or operator shall provide proof that repair parts have been ordered or any other records that would indicate that the delay in making repairs is beyond his or her control.

(iii) The Administrator's determination of whether acceptable operation and maintenance procedures are being used will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturing recommendations and specifications, and inspection of the CMS. Operation and maintenance procedures written by the CMS manufacturer and other guidance also can be used to maintain and operate each CMS.

(2) All CMS shall be installed such that representative measurements of emissions or process parameters from the affected source are obtained. In addition, CEMS shall be located according to procedures contained in the applicable performance specification(s).

(3) All CMS shall be installed, operational, and the data verified as specified in the relevant standard either prior to or in conjunction with conducting performance tests under § 63.7. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(4) Except for system breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level calibration drift adjustments, all CMS, including COMS and CEMS, shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(i) All COMS shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(ii) All CEMS for measuring emissions other than opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(5) Unless otherwise approved by the Administrator, minimum procedures for COMS shall include a method for producing a simulated zero opacity condition and an upscale (high-level) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of all the analyzer's internal optical surfaces and all electronic circuitry, including the lamp and photodetector assembly normally used in the measurement of opacity.

(6) The owner or operator of a CMS installed in accordance with the provisions of this part and the applicable CMS performance specification(s) shall check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the performance evaluation plan developed under paragraphs (e)(3)(i) and (e)(3)(ii) of this section. The zero (low-level) and high-level calibration drifts shall be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specification(s) specified in the relevant standard. The system must allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified, whenever specified. For COMS, all optical and instrumental surfaces exposed to the effluent gases shall be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces shall be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4 percent opacity.

(7)(i) A CMS is out of control if—

(A) The zero (low-level), mid-level (if applicable), or high-level calibration drift (CD) exceeds two times the applicable CD specification in the applicable performance specification or in the relevant standard; or

(B) The CMS fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; or

(C) The COMS CD exceeds two times the limit in the applicable performance specification in the relevant standard.

(ii) When the CMS is out of control, the owner or operator of the affected source shall take the necessary corrective action and shall repeat all necessary tests which indicate that the system is out of control. The owner or operator shall take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour the owner or operator conducts a performance check (e.g., calibration drift) that indicates an exceedance of the performance requirements established under this part. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits. During the period the CMS is out of control, recorded data shall not be used in data averages and calculations, or to meet any data availability requirement established under this part.

(8) The owner or operator of a CMS that is out of control as defined in paragraph (c)(7) of this section shall submit all information concerning out-of-control periods, including start and end dates and hours and descriptions of corrective actions taken, in the excess emissions and continuous monitoring system performance report required in § 63.10(e)(3).

(d) *Quality control program.* (1) The results of the quality control program required in this paragraph will be considered by the Administrator when he/she determines the validity of monitoring data.

(2) The owner or operator of an affected source that is required to use a CMS and is subject to the monitoring requirements of this section and a relevant standard shall develop and implement a CMS quality control program. As part of the quality control program, the owner or operator shall develop and submit to the Administrator for approval upon request a site-specific performance evaluation test plan for the CMS performance evaluation required in paragraph (e)(3)(i) of this section, according to the procedures specified in paragraph (e). In addition, each quality control program shall include, at a minimum, a written protocol that describes procedures for each of the following operations:

(i) Initial and any subsequent calibration of the CMS;

(ii) Determination and adjustment of the calibration drift of the CMS;

(iii) Preventive maintenance of the CMS, including spare parts inventory;

(iv) Data recording, calculations, and reporting;

(v) Accuracy audit procedures, including sampling and analysis methods; and

(vi) Program of corrective action for a malfunctioning CMS.

(3) The owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. Where relevant, e.g., program of corrective action for a malfunctioning CMS, these written procedures may be incorporated as part of the affected source's startup, shutdown, and malfunction plan to avoid duplication of planning and recordkeeping efforts.

(e) *Performance evaluation of continuous monitoring systems*—(1) *General.* When required by a relevant standard, and at any other time the Administrator may require under section 114 of the Act, the owner or operator of an affected source being monitored shall conduct a performance evaluation of the CMS. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in this section or in the relevant standard.

(2) *Notification of performance evaluation.* The owner or operator shall notify the Administrator in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under § 63.7(b) or at least 60 days prior to the date the performance evaluation is scheduled to begin if no performance test is required.

(3)(i) *Submission of site-specific performance evaluation test plan.* Before conducting a required CMS performance evaluation, the owner or operator of an affected source shall develop and submit a site-specific performance evaluation test plan to the Administrator for approval upon request. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external QA program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iii) The owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Administrator (if requested) at least 60 days before the performance test or performance evaluation is scheduled to begin, or on a mutually agreed upon date, and review and approval of the performance evaluation test plan by the Administrator will occur with the review and approval of the site-specific test plan (if review of the site-specific test plan is requested).

(iv) The Administrator may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

(v) In the event that the Administrator fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in § 63.7(c)(3), the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the monitoring method(s) specified in the relevant standard, the owner or operator shall conduct the performance evaluation within the time specified in this subpart using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Administrator approves the use of the alternative method. If the Administrator does not approve the use of the alternative method within 30 days before the performance evaluation is scheduled to begin, the performance evaluation deadlines specified in paragraph (e)(4) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 60 calendar days after the Administrator approves the use of the alternative method. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Administrator's prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the specified monitoring method(s) instead of an alternative.

(vi) Neither the submission of a site-specific performance evaluation test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator' failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4) *Conduct of performance evaluation and performance evaluation dates.* The owner or operator of an affected source shall conduct a performance evaluation of a required CMS during any performance test required under § 63.7 in accordance with the applicable performance specification as specified in the relevant standard. Notwithstanding the requirement in the previous sentence, if the owner or operator of an affected source elects to submit COMS data for compliance with a relevant opacity emission standard as provided under § 63.6(h)(7), he/she shall conduct a performance evaluation of the COMS as specified in the relevant standard, before the performance test required under § 63.7 is conducted in time to submit the results of the performance evaluation as specified in paragraph (e)(5)(ii) of this section. If a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall conduct the performance evaluation not later than 180 days after the appropriate compliance date for the affected source, as specified in § 63.7(a), or as otherwise specified in the relevant standard.

(5) *Reporting performance evaluation results.* (i) The owner or operator shall furnish the Administrator a copy of a written report of the results of the performance evaluation simultaneously with the results of the performance test required under § 63.7 or within 60 days of completion of the performance evaluation if no test is required, unless otherwise specified in a relevant standard. The Administrator may request that the owner or operator submit the raw data from a performance evaluation in the report of the performance evaluation results.

(ii) The owner or operator of an affected source using a COMS to

determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two or, upon request, three copies of a written report of the results of the COMS performance evaluation under this paragraph. The copies shall be provided at least 15 calendar days before the performance test required under § 63.7 is conducted.

(f) *Use of an alternative monitoring method*—(1) *General.* Until permission to use an alternative monitoring method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this part including, but not limited to, the following:

(i) Alternative monitoring requirements when installation of a CMS specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases;

(ii) Alternative monitoring requirements when the affected source is infrequently operated;

(iii) Alternative monitoring requirements to accommodate CEMS that require additional measurements to correct for stack moisture conditions;

(iv) Alternative locations for installing CMS when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements;

(v) Alternate methods for converting pollutant concentration measurements to units of the relevant standard;

(vi) Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells;

(vii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard;

(viii) Alternative CMS that do not meet the design or performance requirements in this part, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements as specified in the relevant standard. The Administrator may require that such demonstration be performed for each affected source; or

(ix) Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section or in the relevant standard. If the results of the specified and alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4)(i) *Request to use alternative monitoring method.* An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator as described in paragraph (f)(4)(ii) of this section, below. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard, the application shall be submitted not later than with the site-specific test plan required in § 63.7(c) (if requested) or with the site-specific performance evaluation plan (if requested) or at least 60 days before the performance evaluation is scheduled to begin.

(ii) The application shall contain a description of the proposed alternative monitoring system and a performance evaluation test plan, if required, as specified in paragraph (e)(3) of this section. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (f)(4)(i) above to ensure a timely review by the Administrator in order to meet the compliance demonstration date specified in this section or the relevant standard.

(5) *Approval of request to use alternative monitoring method.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements of paragraph (f)(5)(i) of this section.

(iii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (f)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until he or she receives approval from the Administrator to use another monitoring method as allowed by § 63.8(f).

(6) *Alternative to the relative accuracy test.* An alternative to the relative accuracy test for CEMS specified in a relevant standard may be requested as follows:

(i) *Criteria for approval of alternative procedures.* An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator under paragraph (f)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements in § 63.7, or other tests performed following the criteria in § 63.7, demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed

to meet the control efficiency requirement. The alternative procedures do not apply if the CEMS is used continuously to determine compliance with the relevant standard.

(ii) *Petition to use alternative to relative accuracy test.* The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials, and the other equipment checks included in the alternative procedure(s). The Administrator will review the petition for completeness and applicability. The Administrator's determination to approve an alternative will depend on the intended use of the CEMS data and may require specifications more stringent than in Performance Specification 2.

(iii) *Rescission of approval to use alternative to relative accuracy test.* The Administrator will review the permission to use an alternative to the CEMS relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70 percent of the relevant standard for any averaging period, as specified in the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this criterion is exceeded, the owner or operator shall notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

(g) *Reduction of monitoring data.* (1) The owner or operator of each CMS shall reduce the monitoring data as specified in this paragraph. In addition, each relevant standard may contain additional requirements for reducing monitoring data. When additional requirements are specified in a relevant standard, the standard will identify any unnecessary or duplicated requirements in this paragraph that the owner or operator need not comply with.

(2) The owner or operator of each COMS shall reduce all data to 6-minute averages calculated from 36 or more data points equally spaced over each 6-minute period. Data from CEMS for measurement other than opacity, unless otherwise specified in the relevant standard, shall be reduced to 1-hour averages computed from four or more data points equally spaced over each 1-hour period, except during periods when calibration, quality assurance, or maintenance activities pursuant to provisions of this part are being performed. During these periods, a valid hourly average shall consist of at least two data points with each representing a 15-minute period. Alternatively, an arithmetic or integrated 1-hour average of CEMS data may be used. Time periods for averaging are defined in § 63.2.

(3) The data may be recorded in reduced or nonreduced form (e.g., ppm pollutant and percent O_2 or ng/J of pollutant).

(4) All emission data shall be converted into units of the relevant standard for reporting purposes using the conversion procedures specified in that standard. After conversion into units of the relevant standard, the data may be rounded to the same number of significant digits as used in that standard to specify the emission limit (e.g., rounded to the nearest 1 percent opacity).

(5) Monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any data average computed under this part.

§ 63.9 Notification requirements.

(a) *Applicability and general information.* (1) The requirements in this section apply to owners and operators of affected sources that are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a notice that contains all the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.

(4)(i) Before a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notifications to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13).

(ii) After a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notifications to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each notification submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any notifications at its discretion.

(b) *Initial notifications.* (1)(i) The requirements of this paragraph apply to the owner or operator of an affected source when such source becomes subject to a relevant standard.

(ii) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source shall be subject to the notification requirements of this section.

(iii) Affected sources that are required under this paragraph to submit an initial notification may use the application for approval of construction or reconstruction under § 63.5(d) of this subpart, if relevant, to fulfill the initial notification requirements of this paragraph.

(2) The owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant

standard. The notification, which shall be submitted not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard), shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (i.e., physical location) of the affected source;

(iii) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;

(iv) A brief description of the nature, size, design, and method of operation of the source, including its operating design capacity and an identification of each point of emission for each hazardous air pollutant, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each hazardous air pollutant; and

(v) A statement of whether the affected source is a major source or an area source.

(3) The owner or operator of a new or reconstructed affected source, or a source that has been reconstructed such that it is an affected source, that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is not required under § 63.5(d), shall notify the Administrator in writing that the source is subject to the relevant standard no later than 120 days after initial startup. The notification shall provide all the information required in paragraphs (b)(2)(i) through (b)(2)(v) of this section, delivered or postmarked with the notification required in paragraph (b)(5).

(4) The owner or operator of a new or reconstructed major affected source that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is required under § 63.5(d) shall provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new major affected source, reconstruct a major affected source, or reconstruct a major source such that the source becomes a major affected source with the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i);

(ii) A notification of the date when construction or reconstruction was commenced, submitted simultaneously with the application for approval of construction or reconstruction, if construction or reconstruction was commenced before the effective date of the relevant standard;

(iii) A notification of the date when construction or reconstruction was commenced, delivered or postmarked not later than 30 days after such date, if construction or reconstruction was commenced after the effective date of the relevant standard;

(iv) A notification of the anticipated date of startup of the source, delivered or postmarked not more than 60 days nor less than 30 days before such date; and

(v) A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

(5) After the effective date of any relevant standard established by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, an owner or operator who intends to construct a new affected source or reconstruct an affected source subject to such standard, or reconstruct a source such that it becomes an affected source subject to such standard, shall notify the Administrator, in writing, of the intended construction or reconstruction. The notification shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard promulgated in this part. The notification shall be submitted as soon as practicable before startup but no later than 60 days after the effective date of a relevant standard promulgated in this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date. The notification shall include all the information required for an application for approval of construction or reconstruction as specified in § 63.5(d). For major sources, the application for approval of construction or reconstruction may be used to fulfill the requirements of this paragraph.

(c) *Request for extension of compliance.* If the owner or operator of an affected source cannot comply with a relevant standard by the applicable compliance date for that source, or if the owner or operator has installed BACT or technology to meet LAER consistent with § 63.6(i)(5) of this subpart, he/she may submit to the Administrator (or the State with an approved permit program) a request for an extension of compliance as specified in § 63.6(i)(4) through § 63.6(i)(6).

(d) *Notification that source is subject to special compliance requirements.* An owner or operator of a new source that is subject to special compliance requirements as specified in § 63.6(b)(3) and § 63.6(b)(4) shall notify the Administrator of his/her compliance obligations not later than the notification dates established in paragraph (b) of this section for new sources that are not subject to the special provisions.

(e) *Notification of performance test.* The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin to allow the Administrator to review and approve the site-specific test plan required under § 63.7(c), if requested by the Administrator, and to have an observer present during the test.

(f) *Notification of opacity and visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting the opacity or visible emission observations specified in § 63.6(h)(5), if such observations are required for the source by a relevant standard. The notification shall be submitted with the notification of the performance test date, as specified in paragraph (e) of this section, or if no performance test is required or visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, the owner or operator shall deliver or postmark the notification not less than 30 days before the opacity or visible emission observations are scheduled to take place.

(g) *Additional notification requirements for sources with continuous monitoring systems.* The owner or operator of an affected source required to use a CMS by a relevant standard shall furnish the Administrator written notification as follows:

(1) A notification of the date the CMS performance evaluation under § 63.8(e) is scheduled to begin, submitted simultaneously with the notification of the performance test date required under § 63.7(b). If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under § 63.7(h), the owner or operator shall notify the Administrator in writing of the date of the performance evaluation

at least 60 calendar days before the evaluation is scheduled to begin;

(2) A notification that COMS data results will be used to determine compliance with the applicable opacity emission standard during a performance test required by § 63.7 in lieu of Method 9 or other opacity emissions test method data, as allowed by § 63.6(h)(7)(ii), if compliance with an opacity emission standard is required for the source by a relevant standard. The notification shall be submitted at least 60 calendar days before the performance test is scheduled to begin; and

(3) A notification that the criterion necessary to continue use of an alternative to relative accuracy testing, as provided by § 63.8(f)(6), has been exceeded. The notification shall be delivered or postmarked not later than 10 days after the occurrence of such exceedance, and it shall include a description of the nature and cause of the increased emissions.

(h) *Notification of compliance status.* (1) The requirements of paragraphs (h)(2) through (h)(4) of this section apply when an affected source becomes subject to a relevant standard.

(2)(i) Before a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the source has complied with the relevant standard. The notification shall list—

(A) The methods that were used to determine compliance;

(B) The results of any performance tests, opacity or visible emission observations, continuous monitoring system (CMS) performance evaluations, and/or other monitoring procedures or methods that were conducted;

(C) The methods that will be used for determining continuing compliance, including a description of monitoring and reporting requirements and test methods;

(D) The type and quantity of hazardous air pollutants emitted by the source (or surrogate pollutants if specified in the relevant standard), reported in units and averaging times and in accordance with the test methods specified in the relevant standard;

(E) An analysis demonstrating whether the affected source is a major source or an area source (using the emissions data generated for this notification);

(F) A description of the air pollution control equipment (or method) for each emission point, including each control device (or method) for each hazardous air pollutant and the control efficiency (percent) for each control device (or method); and

(G) A statement by the owner or operator of the affected existing, new, or reconstructed source as to whether the source has complied with the relevant standard or other requirements.

(ii) The notification shall be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in a relevant standard, in which case the letter shall be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). For example, the notification shall be sent before close of business on the 60th (or other required) day following completion of the initial performance test and again before the close of business on the 60th (or other required) day following the completion of any subsequent required performance test. If no performance test is required but opacity or visible emission observations are required to demonstrate compliance with an opacity or visible emission standard under this part, the notification of compliance status shall be sent before close of business on the 30th day following the completion of opacity or visible emission observations.

(3) After a title V permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's title V permit, including reports required under this part. After a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority following completion of the relevant compliance demonstration activity specified in the relevant standard.

(4) [Reserved]

(5) If an owner or operator of an affected source submits estimates or preliminary information in the application for approval of construction or reconstruction required in § 63.5(d) in place of the actual emissions data or control efficiencies required in paragraphs (d)(1)(ii)(H) and (d)(2) of § 63.5, the owner or operator shall submit the actual emissions data and other correct information as soon as available but no later than with the initial notification of compliance status required in this section.

(6) Advice on a notification of compliance status may be obtained from the Administrator.

(i) *Adjustment to time periods or postmark deadlines for submittal and review of required communications.* (1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (i)(2) and (i)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (i)(2) and (i)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

(j) *Change in information already provided.* Any change in the information already provided under this section shall be provided to the Administrator in writing within 15 calendar days after the change.

§ 63.10 Recordkeeping and reporting requirements.

(a) *Applicability and general information.* (1) The requirements of this section apply to owners or operators of affected sources who are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a report that contains all the information required in a report listed in this section, an owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

(4)(i) Before a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13).

(ii) After a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each report submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any reports at its discretion.

(5) If an owner or operator of an affected source in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. For each relevant standard established pursuant to section 112 of the Act, the allowance in the previous sentence applies in each State beginning 1 year after the affected source's compliance date for that standard. Procedures governing the implementation of this provision are specified in § 63.9(i).

(6) If an owner or operator supervises one or more stationary sources affected by more than one standard established pursuant to section 112 of the Act, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required for each source shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the latest compliance date for any relevant standard established pursuant to section 112 of the Act for any such affected source(s). Procedures governing the implementation of this provision are specified in § 63.9(i).

(7) If an owner or operator supervises one or more stationary sources affected by standards established pursuant to section 112 of the Act (as amended November 15, 1990) and standards set under part 60, part 61, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required by each relevant (i.e., applicable) standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the relevant section 112 standard, or 1 year after the stationary source is required to be in compliance with the applicable part 60 or part 61 standard, whichever is latest. Procedures governing the implementation of this provision are specified in § 63.9(i).

(b) *General recordkeeping requirements.* (1) The owner or operator of an affected source subject to the provisions of this part shall maintain files of all information (including all reports and notifications) required by this part recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

(2) The owner or operator of an affected source subject to the provisions of this part shall maintain relevant records for such source of—

(i) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(ii) The occurrence and duration of each malfunction of the air pollution control equipment;

(iii) All maintenance performed on the air pollution control equipment;

(iv) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)];

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)] when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

(vi) Each period during which a CMS is malfunctioning or inoperative (including out-of-control periods);

(vii) All required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, 15-minute averages of CMS data, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report);

(viii) All results of performance tests, CMS performance evaluations, and opacity and visible emission observations;

(ix) All measurements as may be necessary to determine the conditions of performance tests and performance evaluations;

(x) All CMS calibration checks;

(xi) All adjustments and maintenance performed on CMS;

(xii) Any information demonstrating whether a source is meeting the requirements for a waiver of

recordkeeping or reporting requirements under this part, if the source has been granted a waiver under paragraph (f) of this section;

(xiii) All emission levels relative to the criterion for obtaining permission to use an alternative to the relative accuracy test, if the source has been granted such permission under § 63.8(f)(6); and

(xiv) All documentation supporting initial notifications and notifications of compliance status under § 63.9.

(3) Recordkeeping requirement for applicability determinations. If an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants is not subject to a relevant standard or other requirement established under this part, the owner or operator shall keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination shall include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) shall be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis shall be performed in accordance with requirements established in subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any.

(c) *Additional recordkeeping requirements for sources with continuous monitoring systems.* In addition to complying with the requirements specified in paragraphs (b)(1) and (b)(2) of this section, the owner or operator of an affected source required to install a CMS by a relevant standard shall maintain records for such source of—

(1) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods);

(2)–(4) [Reserved]

(5) The date and time identifying each period during which the CMS was inoperative except for zero (low-level) and high-level checks;

(6) The date and time identifying each period during which the CMS was out of control, as defined in § 63.8(c)(7);

(7) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during startups, shutdowns, and malfunctions of the affected source;

(8) The specific identification (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during periods other than startups, shutdowns, and malfunctions of the affected source;

(9) [Reserved]

(10) The nature and cause of any malfunction (if known);

(11) The corrective action taken or preventive measures adopted;

(12) The nature of the repairs or adjustments to the CMS that was inoperative or out of control;

(13) The total process operating time during the reporting period; and

(14) All procedures that are part of a quality control program developed and implemented for CMS under § 63.8(d).

(15) In order to satisfy the requirements of paragraphs (c)(10) through (c)(12) of this section and to avoid duplicative recordkeeping efforts, the owner or operator may use the affected source's startup, shutdown, and malfunction plan or records kept to satisfy the recordkeeping requirements of the startup, shutdown, and malfunction plan specified in § 63.6(e), provided that such plan and records adequately address the requirements of paragraphs (c)(10) through (c)(12).

(d) *General reporting requirements.* (1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

(2) *Reporting results of performance tests.* Before a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of any performance test under § 63.7 to the Administrator. After a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of a required performance test to the appropriate permitting authority. The owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator. The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h).

(3) *Reporting results of opacity or visible emission observations.* The owner or operator of an affected source required to conduct opacity or visible emission observations by a relevant standard shall report the opacity or visible emission results (produced using Test Method 9 or Test Method 22, or an alternative to these test methods) along with the results of the performance test required under § 63.7. If no performance test is required, or if visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the performance test required under § 63.7, the owner or operator shall report the opacity or visible emission results before the close of business on the 30th day following the completion of the opacity or visible emission observations.

(4) *Progress reports.* The owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under § 63.6(i) shall submit such reports to the Administrator (or the State with an approved permit program) by the dates specified in the written extension of compliance.

(5)(i) *Periodic startup, shutdown, and malfunction reports.* If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)], the owner or operator shall state such information in a startup, shutdown, and malfunction report. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, that shall be submitted to the Administrator semiannually (or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit). The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day

following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emissions and continuous monitoring system performance (or other periodic) reports under this part, the startup, shutdown, and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown, and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under paragraph (e) of this section, the frequency of reporting for the startup, shutdown, and malfunction reports also may be reduced if the Administrator does not object to the intended change. The procedures to implement the allowance in the preceding sentence shall be the same as the procedures specified in paragraph (e)(3) of this section.

(ii) *Immediate startup, shutdown, and malfunction reports.* Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The immediate report required under this paragraph shall consist of a telephone call (or facsimile [FAX] transmission) to the Administrator within 2 working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within 7 working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in § 63.9(i).

(e) *Additional reporting requirements for sources with continuous monitoring systems*—(1) *General.* When more than one CEMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CEMS.

(2) *Reporting results of continuous monitoring system performance evaluations.* (i) The owner or operator of an affected source required to install a CMS by a relevant standard shall furnish the Administrator a copy of a written report of the results of the CMS performance evaluation, as required under § 63.8(e), simultaneously with the results of the performance test required under § 63.7, unless otherwise specified in the relevant standard.

(ii) The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two or, upon request, three copies of a written report of the results of the COMS performance evaluation conducted under § 63.8(e). The copies shall be furnished at least 15 calendar days before the performance test required under § 63.7 is conducted.

(3) *Excess emissions and continuous monitoring system performance report and summary report.* (i) Excess emissions and parameter monitoring exceedances are defined in relevant standards. The owner or operator of an affected source required to install a CMS by a relevant standard shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator semiannually, except when—

(A) More frequent reporting is specifically required by a relevant standard;

(B) The Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source; or

(C) The CMS data are to be used directly for compliance determination and the source experienced excess emissions, in which case quarterly reports shall be submitted. Once a source reports excess emissions, the source shall follow a quarterly reporting format until a request to reduce reporting frequency under paragraph (e)(3)(ii) of this section is approved.

(ii) *Request to reduce frequency of excess emissions and continuous monitoring system performance reports.* Notwithstanding the frequency of reporting requirements specified in paragraph (e)(3)(i) of this section, an owner or operator who is required by a relevant standard to submit excess emissions and continuous monitoring system performance (and summary) reports on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(A) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected source's excess emissions and continuous monitoring system performance reports continually demonstrate that the source is in compliance with the relevant standard;

(B) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the relevant standard; and

(C) The Administrator does not object to a reduced frequency of reporting for the affected source, as provided in paragraph (e)(3)(iii) of this section.

(iii) The frequency of reporting of excess emissions and continuous monitoring system performance (and summary) reports required to comply with a relevant standard may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the 5-year recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the

absence of a notice of disapproval within 45 days, approval is automatically granted.

(iv) As soon as CMS data indicate that the source is not in compliance with any emission limitation or operating parameter specified in the relevant standard, the frequency of reporting shall revert to the frequency specified in the relevant standard, and the owner or operator shall submit an excess emissions and continuous monitoring system performance (and summary) report for the noncomplying emission points at the next appropriate reporting period following the noncomplying event. After demonstrating ongoing compliance with the relevant standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard, as provided for in paragraphs (e)(3)(ii) and (e)(3)(iii) of this section.

(v) *Content and submittal dates for excess emissions and monitoring system performance reports.* All excess emissions and monitoring system performance reports and all summary reports, if required, shall be delivered or postmarked by the 30th day following the end of each calendar half or quarter, as appropriate. Written reports of excess emissions or exceedances of process or control system parameters shall include all the information required in paragraphs (c)(5) through (c)(13) of this section, in § 63.8(c)(7) and § 63.8(c)(8), and in the relevant standard, and they shall contain the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no excess emissions or exceedances of a parameter have occurred, or a CMS has not been inoperative, out of control, repaired, or adjusted, such information shall be stated in the report.

(vi) *Summary report.* As required under paragraphs (e)(3)(vii) and (e)(3)(viii) of this section, one summary report shall be submitted for the hazardous air pollutants monitored at each affected source (unless the relevant standard specifies that more than one summary report is required, e.g., one summary report for each hazardous air pollutant monitored). The summary report shall be entitled "Summary Report—Gaseous and Opacity Excess Emission and Continuous Monitoring System Performance" and shall contain the following information:

(A) The company name and address of the affected source;

(B) An identification of each hazardous air pollutant monitored at the affected source;

(C) The beginning and ending dates of the reporting period;

(D) A brief description of the process units;

(E) The emission and operating parameter limitations specified in the relevant standard(s);

(F) The monitoring equipment manufacturer(s) and model number(s);

(G) The date of the latest CMS certification or audit;

(H) The total operating time of the affected source during the reporting period;

(I) An emission data summary (or similar summary if the owner or operator monitors control system parameters), including the total duration of excess emissions during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total duration of excess emissions during the reporting period into those that are due to startup/shutdown, control equipment problems, process problems, other known causes, and other unknown causes;

(J) A CMS performance summary (or similar summary if the owner or operator monitors control system parameters), including the total CMS downtime during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of CMS downtime expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total CMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes;

(K) A description of any changes in CMS, processes, or controls since the last reporting period;

(L) The name, title, and signature of the responsible official who is certifying the accuracy of the report; and

(M) The date of the report.

(vii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, and CMS downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report shall be submitted, and the full excess emissions and continuous monitoring system performance report need not be submitted unless required by the Administrator.

(viii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, both the summary report and the excess emissions and continuous monitoring system performance report shall be submitted.

(4) *Reporting continuous opacity monitoring system data produced during a performance test.* The owner or operator of an affected source required to use a COMS shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results. The report of COMS data shall be submitted simultaneously with the report of the performance test results required in paragraph (d)(2) of this section.

(f) *Waiver of recordkeeping or reporting requirements.* (1) Until a waiver of a recordkeeping or reporting requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under § 63.6(i), any required compliance progress report or compliance status report required under this part [such as under § 63.6(i) and § 63.9(h)] or in the source's title V permit, or an excess emissions and continuous monitoring system performance report required under paragraph (e) of this section, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(4) The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements under this paragraph when he/she—

(i) Approves or denies an extension of compliance; or

(ii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iii) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) A waiver of any recordkeeping or reporting requirement granted under this paragraph may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(6) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.11 Control device requirements.

(a) *Applicability.* This section contains requirements for control devices used to comply with provisions in relevant standards. These requirements apply only to affected sources covered by relevant standards referring directly or indirectly to this section.

(b) *Flares.* (1) Owners or operators using flares to comply with the provisions of this part shall monitor these control devices to assure that they are operated and maintained in conformance with their designs. Applicable subparts will provide provisions stating how owners or operators using flares shall monitor these control devices.

(2) Flares shall be steam-assisted, air-assisted, or non-assisted.

(3) Flares shall be operated at all times when emissions may be vented to them.

(4) Flares shall be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. Test Method 22 in Appendix A of part 60 of this chapter shall be used to determine the compliance of flares with the visible emission provisions of this part. The observation period is 2 hours and shall be used according to Method 22.

(5) Flares shall be operated with a flame present at all times. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(6) Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 MJ/scm (200 Btu/scf) or greater if the flare is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\sum_{i=1}^{n} C_i H_i$$

Where:

H_T=Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C.

K=Constant =

$$1.740\times10^{-7}\left(\frac{1}{\text{ppmv}}\right)\left(\frac{\text{g-mole}}{\text{scm}}\right)\left(\frac{\text{MJ}}{\text{kcal}}\right)$$

where the standard temperature for (g-mole/scm) is 20 °C.

C_i=Concentration of sample component i in ppmv on a wet basis, as measured for organics by Test Method 18 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 63.14).

H_i=Net heat of combustion of sample component i, kcal/g-mole at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 63.14) if published values are not available or cannot be calculated.

n=Number of sample components.

(7)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (b)(7)(ii) and (b)(7)(iii) of this section. The actual exit velocity of a flare shall be determined by dividing by the volumetric flow rate of gas being combusted (in units of emission standard temperature and pressure), as determined by Test Methods 2, 2A, 2C, or 2D in Appendix A to 40 CFR part 60 of this chapter, as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(ii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122 m/sec (400 ft/sec), are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, less than the velocity V_{max}, as determined by the method specified in this paragraph, but less than 122 m/sec (400 ft/sec) are allowed. The maximum permitted velocity, V_{max}, for flares complying with this paragraph shall be determined by the following equation:

$Log_{10}(V_{max})=(H_T+28.8)/31.7$

Where:

V_{max}=Maximum permitted velocity, m/sec.

28.8=Constant.

31.7=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

(8) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity V_{max}. The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$V_{max}=8.706+0.7084(H_T)$

Where:

V_{max}=Maximum permitted velocity, m/sec.

8.706=Constant.

0.7084=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

§ 63.12 State authority and delegations.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from—

(1) Adopting and enforcing any standard, limitation, prohibition, or other regulation applicable to an affected source subject to the requirements of this part, provided that such standard, limitation, prohibition, or regulation is not less stringent than any requirement applicable to such source established under this part;

(2) Requiring the owner or operator of an affected source to obtain permits, licenses, or approvals prior to initiating construction, reconstruction, modification, or operation of such source; or

(3) Requiring emission reductions in excess of those specified in subpart D of this part as a condition for granting the extension of compliance authorized by section 112(i)(5) of the Act.

(b)(1) Section 112(l) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce standards and

other requirements pursuant to section 112 for stationary sources located in that State. Because of the unique nature of radioactive material, delegation of authority to implement and enforce standards that control radionuclides may require separate approval.

(2) Subpart E of this part establishes procedures consistent with section 112(l) for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(c) All information required to be submitted to the EPA under this part also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act, provided that each specific delegation may exempt sources from a certain Federal or State reporting requirement. The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to the EPA and the State agency.

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted to the appropriate Regional Office of the U.S. Environmental Protection Agency indicated in the following list of EPA Regional Offices.

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Air, Pesticides and Toxics Division, J.F.K. Federal Building, Boston, MA 02203–2211.

EPA Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Air and Waste Management Division, 26 Federal Plaza, New York, NY 10278.

EPA Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air, Radiation and Toxics Division, 841 Chestnut Street, Philadelphia, PA 19107.

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air, Pesticides and Toxics, Management Division, 345 Courtland Street, NE., Atlanta, GA 30365.

EPA Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL 60604–3507.

EPA Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Director, Air, Pesticides and Toxics, 1445 Ross Avenue, Dallas, TX 75202–2733.

EPA Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101.

EPA Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air and Toxics Division, 999 18th Street, 1 Denver Place, Suite 500, Denver, CO 80202–2405.

EPA Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam), Director, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

EPA Region X (Alaska, Idaho, Oregon, Washington), Director, Air and Toxics Division, 1200 Sixth Avenue, Seattle, WA 98101.

(b) All information required to be submitted to the Administrator under this part also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act. The owner or operator of an affected source may contact the appropriate EPA Regional Office for the mailing addresses for those States whose delegation requests have been approved.

(c) If any State requires a submittal that contains all the information required in an application, notification, request, report, statement, or other communication required in this part, an owner or operator may send the appropriate Regional Office of the EPA a copy of that submittal to satisfy the requirements of this part for that communication.

§ 63.14 Incorporations by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capital Street, NW, suite 700, Washington, DC, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC, and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 63.11(b)(6).

(2) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method], IBR approved for § 63.11(b)(6).

§ 63.15 Availability of information and confidentiality.

(a) *Availability of information.* (1) With the exception of information protected through part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), notification of compliance status, excess emissions and continuous monitoring systems performance report, and title V permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(2) The availability to the public of information provided to or otherwise obtained by the Administrator under this part shall be governed by part 2 of this chapter.

(b) *Confidentiality.* (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a title V permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a title V permit may be entitled to protection from disclosure.

[FR Doc. 94–5312 Filed 3–15–94; 8:45 am]
BILLING CODE 6560–50–P